TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900

No. 46

J. M. ROBINSON & CO., PLAINTIFFS IN ERROR,

vs.

J. G. BELT AND C. M. KING.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED SEPTEMBER 24, 1900.

(18,038.)

(18,053.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 252.

J. M. ROBINSON & CO., PLAINTIFFS IN ERROR,

vs.

J. C. BELT AND C. M. KING.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit at the December term, 1899, of said court, begun and held at the United States court-house in the city of St. Louis, Missouri, on the first Monday in December, to wit: the fourth day of December, A. D. 1899, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the twelfth day of September, A. D. 1899, a transcript of record, pursuant to a writ of error directed to the United States court of appeals in the Indian Territory, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein J. M. Robinson and Company were plaintiffs in error, and J. C. Belt and C. M. King, were defendants in error, which said transcript of record is in the words and figures following, to wit:

1 In the United States Court of Appeals in the Indian Territory.

J. M. ROBINSON & Co., Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING, Interpleader, Defendants in Error. } Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the United States court of appeals in the Indian Territory, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the United States court of appeals in the Indian Territory, before you, or some of you, between J. M. Robinson & Co., appellants, said cause bearing No. 18 pending in said court upon appeal from the northern judicial district of the United States court for the Indian Territory, a manifest error hath happened, to the great damage of the said J. M. Robinson & Co., appellants, and his sureties upon his supersedeas bond as by his complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the eighth circuit, together with this writ,

so that you have the said record and proceedings aforesaid, at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, sixty days from and after this date, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct
2 that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this, the 8th day of July, 1899. Issued at the office in the city of South McAlester with the seal of the United States court of appeals in the Indian Territory.

Seal United States Court of Appeals in the Indian Territory.

WM. P FREEMAN,
Clerk of U. S. Court of Appeals.

Allowed by
JOHN R. THOMAS, *Judge.*

Filed July 10th, 1899.

WM. P. FREEMAN, *Clerk.*

UNITED STATES OF AMERICA, *Indian Territory,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within case, with all things concerning the same.

Seal United States Court of Appeals in the Indian Territory.

In witness whereof, I hereto subscribe my name and affix the seal of the United States court of appeals in the Indian Territory, at office in the city of South McAlester, this 15th day of July, A. D. 1899.

WM. P. FREEMAN,
Clerk United States Court of Appeals in the Indian Territory.

UNITED STATES OF AMERICA, *ss:*

To J. C. Belt and C. M. King, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States court of appeals in the Indian Territory, wherein J. M. Robinson & Co., apppellants are plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in
3 said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John R. Thomas, associate justice of the

United States court of appeals in the Indian Territory, this the 8th day of July, 1899.

JOHN R. THOMAS,
Associate Justice of U. S. Court of Appeals in the Indian Territory.

Service acknowledged this the 15th day of July, 1899.

KOOGLER & WATKINS,
Att'ys for J. C. Belt and C. M. King, Interpleader.

Filed Jul- 15th, 1899.

WM. P. FREEMAN, *Clerk.*

UNITED STATES OF AMERICA, *Indian Territory,* } *sct:*

In the Court of Appeals.

Pleas and proceedings in the United States court of appeals in the Indian Territory, at the city of South McAlester, before the Honorable William M. Springer, chief justice; and Honorable William H. H. Clayton, Honorable John R. Thomas and Honorable Hosea Townsend, associate justices.

WILLIAM P. FREEMAN, *Clerk.*

J. M. ROBINSON & COMPANY, Appellants,
vs.
JOHN C. BELT, Defendant; C. M. KING, Interpleader, Appellees.

Be it remembered, that on the 10th day of December, 1895, there was filed in the office of the clerk of the United States court of appeals in the Indian Territory, at South McAlester, a transcript of the record of the United States court for the northern district of the Indian Territory, in the above-entitled cause, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Indian Territory, Northern District,* } *ss:*

Pleas in the United States court for the northern district of the Indian Territory, at Muscogee, in the cause numbered 1285, and entitled J. M. Robinson & Company, plaintiffs, against John C. Belt, defendant, and C. M. King, interpleader.

JAMES A. WINSTON, *Clerk.*

On the 31st day of May, A. D. 1892, there was filed in the office of the clerk of the United States court for the Indian Territory, first judicial division (now the northern district), at Muscogee, in
4 said division and Territory, the amended interplea of C. M. King, in the above entitled and numbered cause, which is in words and figures as follows, to wit:

"UNITED STATES OF AMERICA, } ss:
Indian Territory, First Judicial Division, }

In the United States Court in the Indian Territory, First Judicial Division, May Term, A D. 1892.

J. M. ROBINSON & Co., Plaintiffs, }
versus } Interplea.
JOHN C. BELT, Defendant. }

And now comes C. M. King, and leave of the court first had and obtained, files this his first amended interplea, in lieu of his interplea filed herein on the — day of May, A. D. 1892, and states that he (—) at the time of the issuance and levy of the writ of attachment herein, and is now the owner of all the property levied upon herein by T. B. Needles, United States marshal for the Indian Territory, by virtue of the writ of attachment in this cause issued and to the said T. B. Needles directed.

That said ownership is evidenced by a certain deed of assignment duly made, executed and delivered to the said C. M. King by the defendant herein, John C. Belt, before the institution of this suit by the plaintiffs herein, he and the said John C. Belt, being insolvent at the time he so made, executed and delivered said deed of assignment, and unable to pay his just debts and which said deed of assignment is as follows, to wit:

'INDIAN TERRITORY, }
Creek Nation. }

Know all men by these presents that I, John C. Belt, am justly indebted to divers and different persons, the names of whom and the amounts due each are stated and described in "Schedule A" hereto attached and made a part hereof, which said debts I, the said John C. Belt, am unable to pay in full and being desirous of securing certain of my creditors in preference to the remaining portion thereof, I have this day and do by these presents and for the consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, and for the uses, purposes and considerations in this deed of assignment stated, granted, bargained, sold, conveyed, assigned, and set over, to C. M. King, my entire stock of merchandise contained in my double-decked frame storehouse situated on the west side of the M. K. & T. Railroad track, in the town of Eufaula, Creek nation, Indian Territory, and occupied by me, the said John C. Belt, for the past few months, as a storehouse, together with the goods, wares and merchandise contained in my warehouse connected with said storehouse, and to the rear thereof, which said stock of merchandise consists of dry goods, clothing, boots, shoes, hats, caps, harness, queensware, glassware, saddlery, furniture, groceries, drugs, stationery, sewing-machines, jewelry, table and pocket cutlery, show-cases and iron safe, desks, store and office furniture, and fixtures of every kind and description contained in said storehouse, notions, etc., of the estimated value of thirteen (*hundred*) ($13,000.00) dollars; also my

doubled-decked frame storehouse above described and warehouse connected and used in conjunction therewith, together with all the rights, appurtenances, and easements connected and belonging thereto. Which said storehouse, warehouse, rights, privileges, etc., connected therewith is of the value of four thousand and five hundred ($4,500.00) dollars; also, about two hundred head of stock cattle now running on the range in the Choctaw and Creek nations, Indian Territory, a portion of which are branded —, a portion branded —, and a portion branded —, and consisting of cows, calves, yearlings and steers, of the estimated value of two thousand (3,000.00) dollars; also all debts due me consisting of notes, accounts and choses in action of every kind and description due me, which are fully described in "Schedule B" hereto attached and made a part hereof, of the value of six thousand ($6,000.00) dollars; also the following-described real estate, to wit: one-half interest in and to three or more lots in the town of Jensen, Sebastian county, Arkansas, deeded to the said John C. Belt and A. J. Belt, by B. F. Hacket, for the more particular description of which reference is here made to said deed, which said lots are of the aggregate value of one hundred ($100.00) dollars; also lots Nos. 8, 9, and 10, in block No. 640, in Rogers & Temple's addition to the city of Fort Smith, Sebastian county, Arkansas, of the aggregate value of fifteen hundred ($1,500.00) dollars. And I, the said John C. Belt, hereby intending to convey unto the said C. M. King for the purposes and in trust as aforesaid all of my effects of every kind and description, wherever situated, both real, personal, and mixed, all notes, book accounts, and choses in action, whether described in this deed or not, save and except only such real and personal property as is exempt under the law from forced sale, a schedule of the property so claimed by the said John C. Belt, to be exempt from forced sale, is hereto attached marked Schedule C, and made a part hereof.

To have and hold the above-described property unto him, the said C. M. King, his assigns, executors, and legal representatives,
6 in trust, and special confidence, nevertheless, that is to say: in trust that he shall, within the time and in the manner provided by law, make sale of all the said property mentioned and described in this deed of assignment and upon the further trust to dispose of the proceeds of the said property when the same shall have been by him collected and reduced to possession in the following manner, to wit:

First. He shall pay and reimburse himself all such reasonable and legitimate costs, charges and expenses, as may be (—) him (*occurred*) and allowed by the court in the execution of this trust, together with such commissions to himself as shall be allowed to him by the court for the discharge of his duty herein, not to exceed, however, the sum of ten per centum of all sums less than one thousand dollars, and four per centum on all sums over one thousand dollars.

Second. And next: He shall pay out of the residue of such proceeds the claims of the following-named creditors of the said John C. Belt, viz: To the Singer Mfg. Co., of St. Louis, the sum of two

hundred and eighteen and $\frac{55}{100}$ ($218.55) dollars; to Mrs. M. J. Belt of Hackett City, Arkansas, the sum of one thousand (1,000) dollars; to A. J. Belt, of Jensen, Arkansas, the sum of one thousand ($1,000.00) dollars; to Al Belt of Fort Smith, Arkansas, the sum of nineteen hundred and fifteen and $\frac{50}{100}$ dollars ($1,915.50); to John D. Bender, of Hackett City, Arkansas, the sum of five hundred ($500.00) dollars; to James R. Ransom, of Eufaula, Indian Territory, the sum of six hundred and forty-two and $\frac{25}{100}$ ($642.25) dollars; to Hodges & Nichols, of Paris, Texas, the sum of five hundred ($500) dollars, who are herein preferred creditors; and the said C. M. King shall pay said claims without any preference or priority between them, provided the above-mentioned creditors agree within ninety days from the date of this instrument to accept such dividend or dividends as they may severally be entitled to under this deed in full satisfaction and discharge of their respective claims against the said John C. Belt, and execute and deliver to the said John C. Belt, a legal release therefor.

Third and next: He shall apply the residue of such proceeds to the payment of the claims of the following creditors of the said John C. Belt, without preference or priority between them, viz: To J. R. Pearce of Eufaula, Indian Territory, the sum of two hundred and fifty-three and $\frac{26}{100}$ dollars; to S. J. Gillian, of Brookin, Ind. Ter., the sum of one hundred dollars; to John Walker, of Texana, Ind. Ter., the sum of eighty-six and $\frac{31}{100}$ dollars; to Tenny, Martin & Anderson, of Ft. Smith, Arkansas, the sum of one hundred and
7 ninety-nine and $\frac{56}{100}$ dollars; who are herein preferred creditors for said amounts, provided they agree within ninety days from this date to accept such dividend or dividends as they may severally be entitled to under this deed in full satisfaction and discharge of their respective claims against the said John C. Belt, and execute and deliver to the said John C. Belt a legal release therefor.

Fourth and next. He shall pay the residue of such proceeds, if any, to the following-named creditors of the said John C. Belt, (—) preference or priority between them, viz: Hargadine, McKittrick Dry Goods Co., of St. Louis, Mo., the sum of $1,110.35; to Kelly-Goodfellow Shoe Co., of St. Louis, Mo., the sum of $975.45; to J. M. Robertson of Louisville, Ky., the sum of $1,297.88; to Geo. Single Hardware Co., of Ft. Smith, Ark., the sum of $122.05; to Dr. Harter Medicine Co., of St. Louis, Mo., the sum of $33.76; to the McCloud & Sparkes Furniture Co., of Ft. Smith, Arkansas, the sum of $423.85; to the Nevada Roller Mills, of Nevada, Mo., the sum of $506.88; to Riley, Wilson & Co., of Kansas City, Mo., the sum of $372.89; who are herein preferred creditors for said amounts, provided they agree within ninety days from the date of this deed to accept such dividend or dividends as they may be severally entitled to under this deed in full satisfaction and discharge of their respective claims against the said John C. Belt, and execute and deliver to the said John C. Belt a legal release therefor.

Fifth and last. The residue of such trust funds and property, if any, shall be applied by the said C. M. King to the payment of the claims of the remainder of the creditors of the said John C. Belt,

and to the claims of such of his creditors mentioned and preferred above as shall fail or refuse to comply with the requirements of this deed, without any preference or priority between them; and after paying all the indebtedness of the said John C. Belt of every kind and description in full; the said C. M. King shall pay the remainder of said funds or property to the said John C. Belt, his legal representatives or assigns.

The possession and absolute control of all of said property is to be delivered to the said C. M. King upon his filing with the clerk of the proper court a good and sufficient bond, approved by the clerk of such court, in a sum at least double the amount of the estimated value of the property hereby assigned, conditioned as required by law, and a full and complete inventory of the property assigned.

In testimony whereof, I, the said John C. Belt, have hereunto set my hand and seal this 29th day of December, A. D. 1891.

(Signed) JOHN C. BELT. [SEAL.]

8 The erasures and interlineations on pages one, two, three, six, seven, eight and nine, were made before signed.

(Signed) JOHN C. BELT.

INDIAN TERRITORY, }
Creek Nation. }

This is to certify that John C. Belt has personally appeared before me, Charles H. Tully, a notary public in and for the first judicial division of the Indian Territory, and acknowledged before me that he had signed the above and foregoing instrument for the uses, purposes and considerations therein mentioned and expressed, and I further certify that the said John C. Belt is personally known to me.

In testimony whereof, I have hereunto set my hand and seal at Eufaula, I. T., this 29th day of Dec., 1891.

[NOTARIAL SEAL.] CHARLES H. TULLY,
Notary Public, 1st Judicial District, Indian Territory.

INDIAN TERRITORY, }
Creek Nation. }

I, C. M. King, the assignee named in the within deed of assignment, hereby accept said trust and agree to execute the same according to the provisions of said deed of assignment and in the manner provided by law.

In witness whereof, I hereto set my hand and seal this 29th day of December, A. D. 1891.

[SEAL.] C. M. KING.

Witness:
A. J. NICHOLS.
J. R. PEARCE.

Filed Dec. 29, 1891, 9 a. m.

WILLIAM NELSON, *Clerk*,
By N. S. YOUNG, *D. C.*

"SCHEDULE A."

Schedule A, Showing a List of Debts Due by John C. Belt, of Eufaula, Creek Nation, Indian Territory.

Names.	Amounts.
To Singer Mfg. Co., account	$218.55
" Mrs. M. J. Belt, note	1,000.00
" A. J. Belt, two notes of $500 each	1,000.00
" Al. Belt, two notes, one for $1,415.50 and one $500	1,915.50
" John D. Bender, note	500.00
" James R. Ransom, account	643.25
" Hodges & Nichols	500.00
" Hargadine, McKittrick Dry G. Co., two notes	1,110.00
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" Kelly Goodfellow Shoe Co., account	975.45
" J. M. Robertson & Co., account	1,297.88
" Geo. Single Hdw. Co., account	122.05
" The Dr. Harter Medicine Co., account	33.76
" McCloud & Sparks Furniture Co., account	423.85
To Nevada Roller Mills, account	506.88
" Riley, Wilson Co., account	372.89
Penny, Martin & Anderson, account	199.56
" S. J. Gilham, note	100.00
" J. R. Pearce, account	253.26
" John Walker, account	86.33
" J. Herman, account	39.95
" Meyer, Bain Mfg. Co., account	50.75
" Midland Tob. Works, account	99.20
" Silsby Stove & Queensware Co., account	101.65
" C. B. Cons & Son Mfg. Co., account	142.00
" Sprague, Warner & Co.	21.50
" St. Louis Wire Co.	33.75
" Bunham, Buckley & Co.	246.42
" Emporia Canning Co.	97.50
" F. E. Rynheart	13.60
" E. P. Dresser Soap Co.	42.05
" Frank Herman & Co.	339.10
" Kansas Spring Bed Co.	53.90
" A. F. Bannister & Co.	50.00
" Merrick Thread Co.	100.00
" W. O. Dunn & Co.	50.00
" Salina Mill & Elevator Co.	404.56
" Missouri Glass Co.	139.74
" Swafford Bros. Bg. Co.	308.32
" " " " " note	55.00
" J. Newberger & Co.	43.75
" Waples, Platter & Co.	446.21
" Higaman Mfg. Corporation	29.50

"	J. S. Merrell Drug Co.	111.97
"	Hugh Oppenheimer	93.50
To	Thomas Mfg. Co.	28.05
"	Goodyear Rubber Co.	42.68
"	Lumus Sons & Co.	109.38
"	Chicago Stove Co.	60.25
"	Swift & Co.	22.06
"	Wheeler & Wilson Mfg. Co.	314.43
"	E. F. W. Meyer	50.45
"	Geo. T. Webb Gro. Co.	104.70

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"	Degnan-McGenna Saddlery Co.	61.50
"	Burnhimer Banner & Co.	300.00 and interest.
"	P. P. Agersigner & Co.	160.00
"	Mound City Tent and Awning Co.	157.86
"	Irwin Auger Bit Co.	9.38
"	St. Louis Candy Co.	93.45
"	Steele & Bushy	370.36
"	V. Dulesa Fruit Co.	53.30
"	F. M. Kinzey & Co.	60.50
"	Witte Hdw. Co.	164.70
"	James Bogy Stove Co.	233.25
"	Tonley Metal Co.	25.25
"	McCord, Nave Merc. Co.	90.69
"	Paddock, Hawley Iron Co.	4.20
"	Loose Brothers' Factory	65.45
"	Ridenour, Baker Gro. Co.	401.66
"	Levison & Blythe	13.22
"	Barton Brothers	95.75
"	F. Smith & Son	169.32
"	Wear, Boogher Dry Goods Co.	635.74
"	B. Negett & Bros.	26.50
"	Rothchilds Bros.	432.68
"	Kingan & Co.	100.00
To	Richards & Conover Hdw. Co.	98.52
"	Goodfellow Shoe Co.	475.45
"	Bradley & Metcalf Co.	332.30
"	John Dodge, notes	96.00
"	W. H. Cooper & Sons	7.50
"	James W. Scudder & Co.	26.73
"	Waters-Pierce Oil Co.	76.70
"	Sweet Springs Milling Co.	403.08
"	E. C. Meacham Arms Co.	81.20
"	Fagel Roller Mills	631.01
"	Singer Mfg. Co.	9.67
"	Geo. H. McCann & Co.	25.20
"	Beckham, Mercer & Co.	410.69
"	Armour Packing Co.	268.14
"	Bar Cash-carriers	39.00

" M. Wolf & Sons	1,219.75
" S. B. Sale & Co	215.00
" Baer, Seasongood & Co	1,196.77 and interest.
" Zuberbier & Behal	71.63
" Gilkerson, Slauss Comm. Co	800.00
" Meyer, Venerman & Co	548.35
" A. Frankenthal & Bros	600.95

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To Abeal, Beach & Fitzgerald	93.77
" Higgins' factory	71.10
" Leaper Hdw. Co	Amount not known.
" S. F. Benser & Co	21.00
" Simmons Hdw. Co	135.75

SCHEDULE B.

Schedule B, Showing a List of Notes and Accounts Due John C. Belt, of Eufaula, Ind. Ter.

Names.		Amounts.
James Herman	Acc't	$8.00
Enoc Autry	"	28.63
I. V. McKey	"	32.76
John H. Moore	"	48.76
John Folsom	"	354.98
John Coppic	"	13.00
J. A. Maryin	"	29.90
R. W. Coffman	"	6.35
W. C. Oakes	"	3.95
Wash Price	"	30.00
T. G. England	"	59.07
E. R. Maddin	"	3.25
Charlie Short	"	300.00
G. W. Lytle	"	2.47
J. W. Kerby	"	7.52
James Gordan	"	22.22
G. I. Pierson	"	3.00
W. W. Massie	"	51.01
Dr. A. C. Bullard	"	29.13
A. L. Stephens	"	5.55
Joe Young, Col	"	4.65
A. M. Boyd	"	3.50
Dick Bertholf	"	6.60
Jordan & Eldridge	Note	50.00
J. K. Spurlock	Acc't	18.32
L. Fann	"	64.33
W. W. Willis	"	5.70
Wm. Sorbee	Acc't	14.65
Jasper Hayes	"	11.85
Wm. Treat	"	2.50

S. W. Ferrell	"		27.50	
Dr. H. W. Bailey	"		4.45	
Pink Hawkins	"		5.50	
J. M. Perryman	"		4.45	
R. L. Saxon	"		5.00	
Lewis Hardridge	"		1.20	
Noa Marshall, Col	"		4.40	
12 Ruben Austin, Col	"		2.30	
T. M. Lucas	"		2.25	
Thos. Shields	"		1.40	
Charles Burdett	"		1.50	J. S.
J. S. Norman	"		9.60	
Frank Nicks, Col	"		.60	
Jno. F. Engerman	"		4.50	
S. M. McVey	"		87.60	
Jackson Dervizy	"		15.83	
J. W. Claumps	"		4.35	
John Franklin	"		17.15	
C. P. Estis	"		53.05	
Geo. Tiger	"		7.35	
Will Cox, Col	"		1.10	
Wm. Marshall	"		4.30	
Thos. Williams	"		5.00	
Sam. Bradberry, Col	"		2.00	
Lester Williams	"		1.95	
V. W. Campbell	"		52.15	
Cap. McGilberry	"		15.35	
David Cummongs	Acc't		1.65	
Wilson Forest	"		1.25	
E. W. McClain	"		3.75	
Billie King, Col	"		1.25	
Parhosey Phillips	"		7.00	
John Douglass	"		5.00	
O. K. Chim, E. Marthla	"		12.00	
H. B. Foreman	"		146.95	
R. L. Williams	"		26.00	
James Douglass	"		46.45	
G. B. Knight	"		17.90	
Jessie Wallace	"		13.50	
Henry Gentry	"		4.00	
John Gibson	"		4.75	
J. B. Brassfield	"		1,850.00	
H. R. Smith	"		1.25	
Wilson & Von	"		105.10	
J. D. Wilson	"		28.55	
D. C. Von	"		13.55	
G. B. McGlassen	"		7.50	
J. W. White	"		30.67	
Ed. Robertson	"		18.95	
John Bond	"		1.25	
Wm. Walker	"		4.65	

Cal. Choat		"		9.55
W. T. Murr		"		32.15
T. J. Wall		"		18.00
	James Davis	"		38.70
13	W. Johnson	"		1.25
	Isaac Wall	"		5.00
John Bush		Acc't		3.00
W. B. Lewis		"		1.25
C. P. Stewart		"		1.70
M. H. McGerry		"		3.20
Cub McIntosh		"		5.30
R. J. Miller		"		20.85
Chowela		"		10.00
Tom Polk		"		1.60
Wm. Paro, Col		"		4.45
John Perberton		"		4.50
Lesis Asberry		"		14.90
Jeff. Brown, Col		"		6.45
C. J. Chambliss		"		7.75
C. A. Sippy		"		19.25
Mrs. Kate Chisholm		"		1.00
Tom Lovelace		"		1.50
L. J. Lewis, Indian		"		3.75
W. S. Hines		"		3.20
Jno. W. Freeman		Note		96.56
Paul Smith, Col		Acc't		5.85
Miss Bettie McIntosh		"		.50
H. H. Hyden		"		9.12
E. P. Rumsey		"		4.85
Frank Edwards		"		1.60 A.
A. M. Yancey		"		2.00
T. J. Rumsey		"		4.75
Jackson Robertson		"		.85
J. M. Morgan		"		2.50
H. M. Counch		"		16.50
Miss Hattie Ross		"		14.00
Edward Gipson		"		6.10
Jno. P. Clarke		Acc't		4.27
Jno. P. Clarke		2 notes		60.00
Andrew Jackson, Col		Acc't		6.25
Chas. Kraft		"		14.35
M. F. Ellis		"		.70
Mrs. S. E. Russell		"		2.00
N. H. Ferrell		"		.95
J. L. Loalen		"		222.28
Mr. McFarland		"		2.50
Miss Clayton		"		1.30
Geo. Washington		"		3.50
Miss Lillie Wheeler		"		7.00
Miss Emma Hoitt		"		4.00
J. H. Crabtree		"		3.00

	J. F. Simpson	"		15.00
14	C. C. Brown	"		1.00
	Townsley & Co.	"		25.00
	Robertson & Craft	"		42.14
	W. C. V. McCarty	"		201.01
	D. N. McIntosh	Note		30.00
	"	"		10.00
	"	"		10.00
	"	"		30.00
	Barney Green	"		10.00
	Chowelotat	"		5.00
	"	"		5.00
	Wm. Willis	"		20.00
	R. L. Saxton	"		100.00
	"	"		20.00
	"	"		10.00
	"	"		10.00
	Brusher & Mansker	Note		30.00
	"	"		13.00
	Parhosey Phillips	"		10.00
	Robert L. Saxton	"		30.00
	Tiney Proctor	"		9.50
	Phillips Buyers	"		20.00
	W. H. Wagoner	"		40.00
	J. F. Wooten	"		30.00
	J. T. Thuler	"		7.25
	W. T. Ferrell	"		5.00
	Chapman Smith	"		7.00
	Ben. Foreman	"		190.00
	E. W. McClain	"		20.00
	J. W. Woolever	"		19.40

SCHEDULE C.

Schedule C, Giving a Description of the Real and Personal Property Claimed by John C. Belt as Exempt under the Law from Forced Sale.

Description.	Valuation.
Lots No. 7, 8, 9, and 10, in block No. 639, in Rogers & Temple's addition to the city of Fort Smith, Sebastian county, Arkansas, of the value of	$1,250.00
Also the following-described personal property, to wit:	
One bed-room set	$27.00
One bedstead	4.50
Two stoves (1 heating and 1 cooking)	28.00
1 (1 mattress and bed clothes	5.00
(1 secretary	4.00
15 (1 bedstead	5.00
(2 center tables	4.00
(1 carpet	10.00

(3 rocking chairs	5.00
(reclining chair	3.00
2 (1 trunk	5.00
(2 lamps	1.50
(3 chairs	2.55

Names.	Amounts.
(Wearing apparel	$40.00
(1 gold watch	25.00
(1 span of gray mares, 4 years old, branded with a damper	110.00
(1 two-horse buggy, Milburn make	75.00
(1 set of second-hand buggy harness	12.00

The personal property embraced in bracket No. 1 is situated and contained in my dwelling-house in Fort Smith, Arkansas, and the personal property embraced in bracket No. 2 is contained in the south room of the Eufaula hotel, in the town of Eufaula, Creek nation, Ind. Ter.

The intervener further states, that the above described and mentioned gold watch, wearing apparel, span of gray mares, buggy and harness, were in and at the town of Eufaula, Creek nation, Indian Territory, at the time of the execution and delivery of the deed of assignment hereinbefore fully set out.

And the said C. M. King further avers that after the making, executing and delivering of said deed of assignment to him by the said John C. Belt and before he took possession or in any manner managed or controlled any of the property so conveyed to him by the said John C. Belt under said deed of assignment, he as such assignee filed with William Nelson, clerk of the first judicial division of the United States court at Muscogee, Indian Territory, a good and sufficient bond, in double the estimated value of all of the property so assigned to him, conditioned as required by the laws of the United States of America, governing the Indian Territory, which said bond was heretofore, to wit, on the 18th day of January, A. D. 1892, by the said William Nelson, clerk as aforesaid, approved and by him filed in his office, and also on said day and date last aforesaid the said C. M. King filed in the said office of the said William Nelson, clerk as aforesaid, a full and complete inventory and description of all of the property, both real and personal and mixed, notes, book accounts and choses in action of every kind and description, conveyed to him under said deed of assignment by said John C.
16 Belt, which said inventory and description contained all of the property of the said John C. Belt of every kind and description, situated and found in the Indian Territory, so far as the same has come to the knowledge of the said C. M. King, and all of the property of the said Belt except that which was exempt under the laws of Arkansas (*for*) forced sale.

And the said C. M. King further avers that the said John C. Belt was at the time he made, executed and delivered to him said deed of assignment and is now and had been for several years prior thereto a married man, the head of a family and a *bona fide* resident citizen of the State of Arkansas; that at the time he so made, executed and

delivered said deed of assignment to the said C. M. King, he, the said John C. Belt, was temporarily (sojourn*eying*) in the Creek nation, Indian Territory, where he was, as a licensed trader under the laws, carrying on a general mercantile business; that almost all of the property of the said John C. Belt, consisting of a large stock of general merchandise, cattle, notes, book accounts, storehouse, ware-room, etc., was situated in Eufaula, Creek nation, Indian Territory, and within the first judicial division of (*of*) the Indian Territory; that at the time he so made, executed and delivered said deed of assignment to this interpleader, he, the said John C. Belt, was holding, using and occupying lots No. 7, 8, 9, and 10 in block No. 639 in Rogers & Temple'- addition to the city of Fort Smith, in Sebastian county, State of Arkansas, containing less than one acre of land, as a homestead for himself, wife, and minor child; that the aggregate value of said lots so used and occupied by the said Belt as a homestead will not now and did not at the date of said deed of assignment, exceed the sum of $1,250.00; that under the constitution and laws of the State of Arkansas in force at the time said deed of assignment was made, executed and delivered to this interpleader, as will fully appear by reference to article nine of the constitution of 1874 of said State and to sections 3006 and 3013, both inclusive, of the Revised Statutes of the said State of Arkansas, published by authority in 1884 and also known as Mansfield Digest, which are referred to and specially plead, a resident citizen of said State of Arkansas, who is the head of a family, is entitled as exempt from forced sale (—) five hundred dollars in personal property, to be selected by him, and also one acre of land in any city, town or village, together with the improvements thereon, occupied by him as a residence, not exceeding in value the sum of $2,500.00.

And the said C. M. King further avers the fact to be that the personal property contained in the south room of the Eufaula
17 hotel, Creek nation, Ind. Ter., embraced in bracket No. 2 in the Schedule C, attached to the deed of assignment as hereinbefore set out, as well as the following items in said Schedule C contained, to wit: 1 span of gray mares, 4 years old, branded with a damper and valued therein at $110.00; 1 two-horse buggy, Milburn make, valued therein at $75.00, and set of second-hand buggy harness valued therein at $12.00, is not now and never was the property of the said John C. Belt, but at the time said deed of assignment was made the same and each item thereof, was the separate property of Telee Belt, wife of the said John C. Belt; that each and all of said items were purchased with the separate money of her, the said Telee Belt and the said John C. Belt never at any time had any interest in any of said articles whatever, and that said items were embraced in said Schedule C by inadvertence and mistake.

And the said C. M. King further avers upon information and charges the fact to be that all of the facts hereinbefore set out were well known to the plaintiffs herein at the time and before they instituted this suit against the said John C. Belt and before they caused the writ of attachment herein to issue.

And the said C. M. King further alleges that since he qualified as

assignee of the said John C. Belt, creditors whose claims amount in the aggregate to the sum of $7,675.32 have agreed to the conditions in said deed of assignment stipulated and accepted (*to*) the terms thereof.

And the said C. M. King further alleges that on the 31st day of December, A. D. 1891, and just after he had completed an inventory of the property so assigned to him by the said Belt, the plaintiff herein wrongfully and without any legal right whatever, caused the said T. B. Needles, marshal as aforesaid, to levy their said writ of attachment upon that portion of the property conveyed to the said King by the said Belt, situated in the Indian Territory and described as follows, to wit: One double-decked frame storehouse and wareroom used in conjunction therewith, in the town of Eufaula, Indian Territory, of the value of $5,500.00; about two hundred head of stock cattle running on the range in the Choctaw and Creek nations, of the value of $3,000.00; also a stock of general merchandise, contained in said double-decked frame storehouse, consisting of dry goods, clothing, boots, shoes, hats, caps, hardware, queensware, glassware, saddlery, furniture, groceries, drugs, stationery, sewing machines, jewelry, table and pocket cutlery, show-cases, an iron
18 safe, desk, store and office furniture and fixtures, notions, etc., and for a more particular description of which reference is here made to "Exhibit 'A'" hereto attached and made a part hereof, which said stock of general merchandise was of the aggregate value of $12,636.57, and all of the property so levied upon by the said T. B. Needles, under plaintiffs' said writ of attachment was of the aggregate value of $20,136.57; and the said C. M. King avers that said levy was made by the said Needles at the instance and under the direction of the plaintiffs herein, and without the consent and against the protest of this interpleader, and that thereafter these plaintiffs unlawfully and without legal authority, converted all of said property above described to their own use and benefit to the damage of the said C. M. King, $20,136.57; that the stock of general merchandise so levied upon by plaintiffs as aforesaid and converted to their own use and benefit is fully and accurately described in said "Exhibit A" hereto attached, and that the reasonable market value of each item thereof, in the town of Eufaula, Indian Territory, the place where plaintiffs so converted said property, at the time the same (*as*) so converted by the plaintiffs, is set opposite such item in figures in said "Exhibit A."

And the said King further avers the fact to be that the plaintiffs herein caused all of said property so levied upon under and by virtue of their said writ of attachment, to be sold in the town of Eufaula, Creek nation, Indian Territory, on the — day of February, A. D. 1892, for the sum of $7,900.00, which said sum was greatly inadequate to the value thereof, and that the said sum so realized from the sale of said property is now in the hands of the clerk of this court.

Wherefore the said C. M. King prays to be made a party to this suit, and that on a final hearing hereof he have judgment against the plaintiffs herein for the reasonable market value of the property

so levied upon under and by virtue of plaintiffs' writ of attachment and by them converted as aforesaid, that the clerk of this court be ordered to pay over to him the said sum of $7,900.00 now in his hands to be credited on the judgment rendered in his favor against the plaintiffs herein, and he prays judgment for his costs in this behalf expended and for such other and further relief as he may be entitled to.

HODGES & NICHOLS AND
JOHN WATKINS,
Att'ys for C. M. King.

19 UNITED STATES OF AMERICA, }
First Judicial Division, Indian Territory, } *ss:*

I, C. M. King, on oath state that the facts contained in the foregoplea are true to the best of (*his*) knowledge and belief.

C. M. KING.

Sworn to and subscribed before me this 31st day of May, A. D. 1892.

WM. NELSON, *Clerk,*
By W. R. SHACKLEFORD, *Deputy.*

Indorsed: "No. 1285. J. M. Robinson & Co. *vs.* John C. Belt. Amended interplea of C. M. King. Filed May 31st, 1892. Wm. Nelson, clerk. By W. R. Shackleford, deputy."

At a regular term of the United States court for the northern district of the Indian Territory, begun and held at the court-room at the town of Muscogee, in said district and Territory, and on the seventh day of May, A. D. 1895.

Present: Honorable William M. Springer, judge of said court.

On the 7th day of June, 1895, the same being the 24th juridical day of said term of said court, among the proceedings (has) was the following, to wit:

J. M. ROBINSON & CO. }
vs. } No. 1285.
J. C. BELT. }

This cause came on to be heard upon the regular call of the docket, and it appearing from the mandate herein filed that the circuit court of appeals, 8th circuit of the United States, reversed the decision of this court and remanded the case with instructions to overrule the demurrer filed herein to intervener's interplea, it is therefore ordered and adjudged that the demurrer to the interplea filed herein be and the same is overruled, and this cause is by agreement set for trial on 16th Sept., 1895.

Thereafterwards, to wit: and on the 19th day of September, A. D. 1895, the same being the 32nd juridical day of said term of said court among the proceedings had was the following, to wit:

20 J. M. ROBINSON & Co. vs. J. C. BELT. } No. 1285.

Answer to Amended Interplea Filed.

Said answer to amended interplea is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *Indian Territory, Northern District,* } ss:

In the United States Court in the Indian Territory, Northern District, at Muscogee.

J. M. ROBINSON & Co., Plaintiffs, vs. JOHN C. BELT, Defendant; C. M. KING, Interpleader. } No. 1285.

The plaintiffs for answer to the amended interplea of C. M. King filed on the 31st day of May, 1892, say:

(1.) That they deny that at the time of the issuance of the levy of the writ of attachment herein, that C. M. King was then the owner or is now the owner of the property levied upon herein by T. B. Needles, United States marshal for the Indian Territory, by virtue of the writ of attachment in this cause issued.

(2.) Plaintiffs further aver that the deed of assignment under which the said C. M. King claims title and ownership to the property herein in which said deed of assignment is made a part of the interplea of the said C. M. King, is fraudulent and void and conveyed no title or ownership or right to possession of the property mentioned therein, to the said C. M. King.

(3.) The plaintiffs further deny that said C. M. King as alleged in his interplea ever filed with William Nelson, clerk of the United States court in the Indian Territory, a full and complete inventory and description of all the property, both real and personal and mixed, notes and book accounts and choses in action of every kind and description as required by law, except such as was exempt from forced sale under the law.

(4.) Plaintiffs further deny the fact to be that the personal property contained in the south room of the Eufaula hotel, Creek nation, Indian Territory, embraced in bracket No. 2 in the Schedule C attached to the deed of assignment, made a part of and fully set out in said King's interplea, as well as the following items: one span of gray mares, three years old, branded with a damper and valued at $110.00; 1 two-horse buggy, Milburn make, valued therein
21 at $75.00, one set second-hand buggy harness, valued therein at $12.00, was or any part thereof, was the property of Telee Belt, wife of the said John C. Belt, but that said property and all of it was the sole property of John C. Belt.

(5.) Plaintiffs deny that the facts set up in the interplea with

reference to said property (*was*) known to the plaintiffs at the institution of this suit, but charge that neither said Telee Belt nor anybody in her behalf ever made any demand for said property, nor have they to this day made any claim through the courts or otherwise for said property or any part thereof, although the said mares, buggy and harness *was* sold at public auction by the marshal of this court and the money deposited with the clerk as required by law.

(6.) Plaintiffs admit that the property described by the interpleader was levied upon by attachments issued out of this court, but deny that said property was of the reasonable market value as set out in Exhibit "A" attached to said interplea, but charge that the said property was sold at public auction after due advertisement and brought its full value at said public sale, and that the sum of $795.77 which the property brought, was all that it ever would have brought at public sale.

Plaintiffs having fully answered, pray to be hence dismissed with their reasonable costs.

N. B. MAXEY,
C. L. JACKSON,
WILLIAM T. HUTCHINGS,
Attorneys for Plaintiffs.

N. B. Maxey, being duly sworn states that he is one of counsel for plaintiffs, and that the statements contained in the foregoing answer are true as he believes.

N. B. MAXEY.

Subscribed and sworn to before me this 19th day of September, 1895.

[SEAL.] MYRA YOUNG,
Notary Public.

Indorsed: "No. 1285. J. M. Robinson & Co. *vs.* John C. Belt, def't. C. M. King, interpleader. Answer to amended interplea. Filed in open court Sept. 19, 1895. Jas. A. Winston, clerk."

And on the same day the following further proceedings were had in said cause, to wit:

22 J. M. ROBINSON & Co. *vs.* J. C. BELT; C. M. KING, Interpleader. } No. 1285.

Now this day come all the parties to this cause by their attorneys and announce ready for trial and demand a jury. Whereupon comes the following jury of good and lawful men, to wit: J. A. Ide, T. F. Meagher, Jesse Measles, Solomon Bragg, Shelton Smith, J. E. Funchess, A. N. Wilcox, Thomas Ray, George Embry, Pete McElmeel, George Williams, and Q. W. Elliott, who are duly empowered and sworn to try the issues herein and a true verdict render.

And now the jury after hearing some of the testimony are allowed to separate until tomorrow morning at nine o'clock.

Thereafterwards, to wit: and on the 20th day of September, A. D. 1895, the same being the 33rd juridical day of said term of said court, among the proceedings had was the following, to wit:

J. M. Robinson & Co.
vs.
J. C. Belt; C. M. King, Interpleader. } No. 1285.

Now on this day the trial of this cause is proceeded with before the jury, and the jury after hearing more testimony and there not being sufficient time to conclude the trial of the case, the jury are allowed to separate until tomorrow morning at nine o'clock.

Thereafterwards, to wit: and on the 21st day of September, A. D. 1895, the same being the 34th juridical day of said term of said court, among the proceedings had was the following, to wit:

J. M. Robinson & Co.
vs.
J. C. Belt; C. M. King, Interpleader. } No. 1285.

Now on this day the trial of this cause is resumed before the jury, and the jury having heard all the testimony are allowed to separate until Monday morning, Sept. 23, 1895, at nine o'clock.

Thereafterwards, to wit: and on the 23rd day of September, A. D. 1895, the same being the 35th juridical day of said court, among the proceedings had was the following, to wit:

23 J. M. Robinson & Co.
vs.
J. C. Belt; C. M. King, Interpleader. } No. 1285.

Now on this day the trial of this cause is resumed before the jury and the jury now having heard the evidence, argument of counsel for both sides and the instructions of the court, retire in charge of a sworn bailiff to consider of their verdict, and after due deliberation return into open court the following verdict, to wit: "J. M. Robinson & Co., pl'ffs, *v.* John C. Belt, defendant, C. M. King, interpleader. We, the jury, find the issues in this cause in favor of the interpleader, C. M. King, and that the proceeds arising from the sale of the attached property was seventy-nine hundred ($7,900.00) dollars. T. F. Meagher, foreman."

Thereafterwards, to wit: and on the 25th day of September, A. D. 1895, the same being the 37th juridical day of said term of said court, among the proceedings (has) was the following, to wit:

J. M. Robinson & Co.
vs.
J. C. Belt; C. M. King, Interpleader. } No. 1285.

Come now the plaintiffs by their attorneys and file a motion for a new trial in this cause.

Thereafterwards, to wit: and on the 27th day of September, A. D. 1895, the same being the 39th juridical day of said term of said court, among the proceedings had was the following, to wit:

J. M. ROBINSON & Co.
vs.
J. C. BELT; C. M. KING, Interpleader. } No. 1285.

Now on this day the motion for a new trial in this cause comes on to be heard and the court after hearing argument of counsel and being fully advised in the premises doth overrule said motion.

Comes now the interpleader herein, by his attorney and files motion for judgment on the verdict heretofore rendered by the jury in this cause.

Thereafterwards, to wit, and on the 28th day of September, A. D. 1895, the same being the 40th juridical day of said term of said court, among the proceedings had was the following, to wit:

J. M. ROBINSON & Co.
vs.
JOHN C. BELT; C. M. KING, Interpleader. } No. 1285.

Now on this day came all the parties to this cause, and the motion for judgment on the verdict of the jury herein comes on to be heard and the court being fully advised in the premises doth sustain said motion; and it appearing to the court that there was filed in this court on May 12, 1892, an agreement by and between the respective parties to this cause and the parties to certain other attachment suits then pending in this court affecting the property claimed by interpleader, the following agreement or stipulation in words and figures, to wit:

"It is hereby agreed by and between the respective parties to this cause, as well as the respective parties to the following numbered causes, to wit: 1279, 1, 2, 3, 4, 5, 6, 7, 8, 9, 1290, 1, 2, 3, 1299, 1302, 1325, 1326, 1327, 1328, 1387, in which the following-named persons are plaintiffs respectively, to wit: A. Frankenthal & Bro.; Wear, Boogher Dry Goods Co.; Kinger & Co.; S. B. Sale & Co.; Armour Packing Co.; J. S. Merrell Drug Co.; Hargadine McKittrick Dry Goods Co.; Rothchilds Bros.; Ridenour, Baker Grocery Co.; Kelly Goodfellow Shoe Co.; Silsby Stove & Queensware Co.; Meyer, Bannerman & Co.; F. Smith & Son; William Rowe; John Farrell; M. Wolf & Sons; St. Louis Candy Co.; Huggins Cracker Co.; Loose Bros.; St. Louis Wire Mill Co.; Armstrong, B. & S.; and in all of which John C. Belt is defendant, and in all of which it is proposed to file an interplea on the part of C. M. King as assignee of John C. Belt; that the pleadings filed in said cause No. 1285 and those filed with reference to any interplea growing out of said suit, shall be adopted and considered as filed in all of the other above-mentioned cases and that similar orders shall be considered as entered in all of said above-mentioned causes; and a judgment similar to the judgment entered in said cause No. 1285, or upon any interplea growing

out of said cause shall be entered in all the other of said above mentioned and numbered causes; and that in the event of any writ of error or appeal taken being sued out or taken for a review of any judgment entered in said cause No. 1285 or the interplea growing out thereof, that such writ of error or appeal shall be considered as applying to all judgments entered in the other of the above numbered and mentioned causes and the judgments in all of such causes shall be held subject to the order or judgment that may be rendered by any appellate tribunal upon any such writ of error or appeal in said cause first above mentioned. Should the plaintiffs or any of them in said suits file a demurrer to the aforesaid interplea, then we agree, should the court consent thereto, that the hearing of said demurrer may be set down for May 31st, or as soon thereafter as the court will hear the same.

(Signed) A. J. NICHOLS,
Att'y for C. M. King.
W. T. HU-CHINGS,
SANDELS & HILL, AND
CLIFFORD L. JACKSON,
Attorneys for Plaintiff- Above Named.

It is therefore ordered, considered and adjudged that the said C. M. King, interpleader, have and recover of and from J. M. Robinson & Co., and said above-named plaintiffs mentioned in said stipulation, the sum of seven thousand nine hundred ($7,900.00) dollars, as per said stipulation and agreement together with the costs of this suit. And it further appearing to the court from the record and evidence submitted that the proceeds of the sale of the property in this case were deposited by the clerk of this court in the First National Bank at Arkansas City, Kansas, and that such bank thereafter suspended payment and that by reason of such suspension only 87 per cent, of such funds were withdrawn from said bank leaving a balance therein of 13 per cent. of the original proceeds amounting to the sum of $1,027.00 subject to the order of this court.

And whereas, it further appearing that nearly the whole amount of the balance of such proceeds amounting to the sum of $6,473.62 were paid to plaintiffs and received by them on the 1st day of March, 1894, and were shared among themselves in the following proportion and amounts, viz: St. Louis Candy Co., $87.60; Huggins Cracker Mfg. Co., $65.60; Loose Bros. Cracker Co., $60.80; Wm. Rowe, $147.25; J. S. Merrell Drug Co., $102.80; Armour Packing Co., $238.36; S. B. Sale & Co., $194.25; Kingan & Co., $92.94; A. Frankelthal & Bro., $559.50; Wear Boogher Dry Goods Co., $594.50; J. M. Robinson & Co., $1,210.00; Ridenour Baker Gro. Co., $379.25; Silsby Stove & Queensware Co., $103.00; Mayer Bannerman & Co., $524.50; F. Smith & Son, $180.00; St. Louis Wire Mill Co., $40.00; Rothchilds Bros., $398.50; Kelly Goodfellow Shoe Co., $786.75; Hargadin McKittrick & Co., $768.02.

It is therefore considered and ordered by the court that the clerk of this court is hereby directed to withdraw and collect from First National Bank at Arkansas City, Kansas, the above-mentioned

amount of proceeds remaining due therefrom, and that the
26 said plaintiffs are hereby ordered to pay and refund to this court the said amounts of money respectively received by them within ninety days from this date; any and all of such sums of money collected or paid into court in compliance with this order shall be paid by the clerk of this court to said C. M. King, the interpleader herein.

To all of which plaintiffs except and pray an appeal which is allowed, and plaintiffs are allowed forty days in which to file a bill of exceptions.

And thereafterwards, to wit, on the 11th day of November, A. D. 1895, there was filed in the office of the clerk of the United States court for the northern district of the Indian Territory, at Muscogee, the bill of exceptions herein, which is in words and figures as follows, to wit:

In the United States Court in the Indian Territory, Northern District, at Muscogee.

J. M. ROBINSON & Co., Plaintiffs,
vs.
J. C. BELT, Defendant; C. M. KING, Interpleader. } No. 1285.

It is hereby stipulated and agreed that the time to file the bill of exceptions in the above-entitled cause shall be extended until the 20th day of November, 1895, on account of the failure of the stenographer to get out the transcript of the testimony in time for the plaintiffs to present their bill of exceptions Nov. 6th, 1895.

J. H. KOOGLER,
Attorney for Defendant Belt and Interpleader C. M. King.

In the United States Court for the Northern District of the Indian Territory.

J. M. ROBINSON & Co.
vs.
J. C. BELT; C. M. KING, Interpleader. } No. 1285.

Bill of Exceptions.

Be it remembered that at the May term, 1895, of the above-named court, to wit, on the 19th day of September, 1895, it being one of the days of the regular May term of the said court, the above-entitled cause was called for trial and all parties having announced themselves ready for trial, and it appearing to the court that the plaintiffs had heretofore taken judgment for their debt and that the only issues to be tried were the issues arising upon the attachment sued out in this cause and the issues on the interplea filed by C. M. King, interpleader herein, and by agreement a jury was em-
27 paneled and the issues arising upon the interplea of C. M. King were submitted to the jury, the issues arising upon the

attachment being reserved for the consideration by the court hereafter, and the interpleader to maintain the issues on his part, introduced the following testimony, to wit:

THURSDAY, *September* 19, 1895—2 p. m.

C. M. KING, being duly sworn testified as follows:

Direct examination.

By J. B. FORRECTER:

Q. State to the jury your name?
A. C. M. King.
Q. Are you acquainted with John C. Belt?
A. Yes, sir, I am.
Q. Brother-in-law of yours, isn't he?
A. Yes, sir. He is.
Q. How long have you known Mr. Belt?
A. I suppose I have known him fifteen or twenty years.
Q. Are you acquainted with J. M. Robinson & Company, the plaintiff in this suit?
A. No, sir, only from reputation. In a mercantile way is the only acquaintance I have had with them.
Q. What was Mr. Belt doing along in the year 1891, say in the latter part of the year?
A. He was selling goods at Eufaula.
Q. In the Creek nation?
A. Yes, sir.
Q. What sort of goods?
A. General merchandise.
Q. Did he continue in business all that year?
A. No, sir, he made an assignment.
Q. To whom?
A. To me about the last of December.
Q. Have you seen the deed of assignment since it was made?
A. No, sir.
Q. Do you know what came of that deed of assignment?
A. It was filed here in the clerk's office.
Q. That the paper to which you refer?
A. Yes, sir.
Q. When was this instrument delivered to you?
A. I think it was about the 29th of December.
Q. What year?
A. 1891.

Mr. FORRESTER: We desire to introduce the deed of assignment from John C. Belt to C. M. King, of date December 29th, 1891, marked filed in the clerk's office of this court on December 29, 1891, at 9 o'clock a. m., signed by William Nelson, clerk, by N. S. Young, deputy clerk.

Mr. HUTCHINGS: Counsel for plaintiffs, objects to the introduction of said deed of assignment because said deed on its face is a partial

assignment, exacting releases as a condition of preference and is therefore void.

28 Mr. FORRESTER: That is a conclusion. Will your honor rule upon that now?

The COURT: Do you desire to make any statement in regard to the objection?

Mr. HUTCHINGS: If your honor would sustain that objection they would endeavor to bring in some facts on it. If they do not we will settle it here. I am just as ready as at any other time.

Mr. FORRESTER: The question has been settled squarely in the circuit court of appeals.

The COURT: The objection is overruled.

To which ruling of the court plaintiffs by their counsel then and there excepted.

Mr. HUTCHINGS: When do — want to hear from me on it? That is what the whole case depends on.

Mr. HODGES: I would suggest that we get the evidence in and then go on with the argument.

The COURT: I understand that there are some things decided in regard to this which make it a mere formal part.

Mr. FORRESTER: That can be raised when the case comes up for argument.

The COURT: The deed must go to the jury subject to the ruling of the court hereafter as to its admissibility.

To which ruling of the court counsel for plaintiffs then and there excepted.

Mr. FORRESTER: I desire to introduce in evidence the inventory and bond of C. M. King; the inventory of the property assigned and the bond given in pursuance of the suit.

Mr. HUTCHINGS: As you understand I am not objecting to the introduction of the inventory and bond because the inventory shows upon its face that it does not embrace all the property of the said J. C. Belt not exempt by law, to wit, the personal property embraced in bracket No. 2 of Schedule C and certain other property contained in Schedule C, to wit, wearing apparel, one gold watch, one span of gray mares, one two-horse buggy and harness, and further that said bond and inventory are immaterial in this case if the deed of assignment is void on our former objection.

Mr. HODGES: Your objection is that the assignee did not put those in the inventory? That is the property, your honor, that we say belonged to Mrs. Belt.

The COURT: That is subject to the ruling of the court hereafter.

Mr. FORRESTER: Of course we introduce them subject to the endorsement thereon. The inventory of the property assigned in the deed of Belt to King filed in the clerk's office January 12, 1892, and bond also of King filed in the clerk's office of this court January 12, 1892.

29 Mr. HODGES: Let us consider in evidence the attachment papers together with the proceedings had in the appeal. Name them over; the attachment, the levy and the inventory.

The COURT: It is agreed that all the papers in the case shall be

considered as evidence if such is the purpose desired, subject to any objection.

Mr. FORRESTER: I have a record of the whole here to save time. We want to introduce writ of attachment, levy and return, order of sale of property, return of marshal of the sale, the appraisement list filed by the marshal of the property, and the amount for which the property was sold under advertisement.

Mr. HODGES: It is agreed by the parties that the property in controversy in this case and claimed by the intervener was sold at public outcry by the marshal of this court for the aggregate sum of $7,900.

Q. Where were you when this deed of assignment was delivered to you?

A. Eufaula.

Q. Where were you at the time of the levy of the attachment?

A. Eufaula.

Q. Had deed been delivered to you prior to the seizure of the property?

A. Yes, sir.

Q. About what time of the day was it that this deed of assignment was delivered to you?

A. As well as I remember it, between one and two o'clock of the morning of December 29th.

Q. When was the property seized on the attachment?

A. I don't remember. It was a day or two afterwards. Just the exact day I cannot say. We were not through taking the inventory of the goods.

Q. What did you do after the deed was delivered?

A. I sent it here to be filed.

Q. Anything else?

A. I went to work taking an inventory.

Q. Who aided you?

A. Mr. Ransom and two or three clerks who were working there in the store.

Q. Mr. Tully or Mr. Foley help you any?

A. No, sir, neither one of those men.

Q. You were engaged in taking the inventory when the attachments were levied?

A. Yes, sir.

Q. That is all you were doing? You were not in possession?

A. No, sir.

Q. Who had the key?

A. Mr. Belt had the key.

Q. They never delivered that to you?

A. No, sir.

Q. How did you take the inventory? By what means did you ascertain the value? This is the inventory here that I have just introduced in evidence?

A. The boys who helped take the inventory were familiar with the mark on the stock of goods.

Q. You mean the cost mark or selling price?

A. The mark on the goods—both cost and selling—and as they would mark out a list they would give it to me and I would keep the list.

Q. In taking the invoice did you consider the cost or selling price?

A. The cost price as marked on the goods.

Q. What was the condition of the stock?

A. It was in good condition, and a fresh stock of goods.

Q. Considerable stock, wasn't it?

A. Yes, sir, considerable stock.

Q. What sort of a house was the goods in?

A. In a frame house, a very good building. I don't remember the size of it. Rather a large building for this country.

Q. What is the population of Eufaula?

A. I judge it to be four or five hundred.

Q. Good trading point is it not?

A. Yes, sir.

Q. Have you any knowledge yourself of the value of such goods as were in there? You ever had any experience with goods?

Mr. HUTCHINGS: We object.

The COURT: What was the question?

Mr. FORRESTER: I simply asked him if he was familiar with the value of goods.

Mr. HODGES: We might as well get at it now.

The COURT: There is no objection to that question.

To which ruling of the court plaintiffs by their counsel then and there excepted.

A. Yes, sir, I have some knowledge.

Q. Were you ever at any time engaged in the mercantile business?

A. Yes, sir.

Q. You stated a little while ago that this was a general store?

A. Yes, sir.

Q. What do you mean by that term?

A. I mean a general line of merchandise, hats, boots and shoes, hardware, queensware, dry goods of different kinds.

Q. You state that you have knowledge of such goods as were in that house assigned to you? What was the value of that stock?

Mr. HUTCHINGS: We object to that.

(At this point a lengthy argument occurred between counsel, the conclusion of which was as follows:)

31 The COURT: It seems to me that much of the argument of counsel, and it has been very exhaustive and able, has related to cases or conditions which might have arisen and remedies which they might have availed themselves of if they had desired to do so and if they had availed themselves of these remedies they could have pursued them as these authorities have indicated, but this is a special remedy under a special statute and is known as in-

terpleading, and at the time this interplea was filed here there was nothing for them to claim except a portion or all of the proceeds that were in court. If they had desired to hold the marshal responsible for trespass they should have instituted proceedings to that end. The then marshal is entitled to be protected by the court now. He is not a party to this suit, but if within the statute of limitations he and his bondsmen could be pursued long after the matter was supposed to be settled it might work great injury to him. He had a right to know at that time whether he was liable and could have been held for trespass in this case. Under this special remedy here, it seems to me the claim must be confined to the proceeds that were in court. The interpleader asks for a specific thing, that is property in court at the time he filed his petition. What you might have done before that (and you might have availed yourself of a great many remedies perhaps) is not now in issue, but you elected to do this. I am at a loss to know if you had proven a different amount as the value of the property what benefit it would be to you if all the proceeds in sight were received from this property. It seems to me that your contention is for a matter which cannot be reached at this time. All that you can reach at this time is the funds which have been collected. I do not see what can be gained by the interpleader by having the proof in the record as to the value of this property, what his opinion might have been as to its value at forced sale or under the ordinary conditions of things. If it were true that this property was sold at a forced sale or judicial sale, we all know that at such sales property does not bring as much as it would in ordinary course of business. This may be the fact in this case, but it brought all it would bring at public sale under an order of this court and the proceeds are in the court. I am, however, inclined to formally overrule the objection notwithstanding my opinion now and let all the facts go to the jury. After a fuller argument, with all the facts before it the court may order its exclusion. As at present advised I am of opinion that this evidence is immaterial, but after the other witnesses are heard I can fully determine that fact, and I may change my mind. Therefore I will overrule the objection and let the facts go to the jury and decide that hereafter.

32 Mr. JACKSON: We suggest to the court it would save a great deal of time not to go into this view of the case. It seems a question of a day or so. It means a big fight.

The COURT: It is merely a question of opinion. They don't presume to ask these witnesses upon every item.

Mr. JACKSON: We will if we are forced to it. We won't (necessarily) prolong the matter.

The COURT: Out of great caution, as this has already gone up to the appellate court once and will probably go up again, this court desires to avail itself of all the light possible before all the evidence is introduced. Therefore I will allow the gentlemen to establish that fact.

To which ruling of the court plaintiffs by their counsel then and there excepted.

FRIDAY, *September* 20, 1895—10 a. m.

Direct examination by Mr. FORRESTER (continued):

Q. On yesterday you stated that you were familiar with the value of the merchandise assigned to you and attached in this action, did you not?

A. Yes, sir, that I had some knowledge of the mercantile value of goods.

Q. What was the market value of that merchandise and storehouse at the time of the seizure under the attachment in this suit?

Mr. HUTCHINGS: Plaintiffs renew the objection last above made.

The COURT: Objection overruled, subject to modification by the court hereafter.

To which ruling of the court plaintiffs by their counsel then and there excepted.

A. $12,549.49.

Direct examination.

By Mr. HODGES:

Q. What relation are you to John Belt?
A. Brother-in-law.
Q. His wife your sister?
A. Yes, sir.
Q. Were you about them a good deal?
A. Yes, sir.
Q. Somewhat familiar with their affairs?
A. Somewhat, yes, sir.
Q. Do you know a pair of gray mares that they had?
A. Yes, sir, I know that they had them.
Q. Do you know whose property they were?
A. They belonged to Mrs. Belt.

Mr. HUTCHINGS: We move to strike out that answer because a deed void on its face cannot be validated by parole evidence.

(Motion to strike out passed for the present.)

33 Q. Your answer was that they belonged to Mrs. Belt?
A. Yes, sir.

Q. You remember a two-horse buggy mentioned in this interplea, Milburn make?

A. Yes, sir.

Q. Who did (*they*) belong to?

A. To Mrs. Belt.

Q. I see in this deed of assignment that there was transferred by Mr. Belt about two hundred head of cattle. Did you know those cattle, see them, some of them before this transaction?

A. No, sir, though I suppose I have seen them too when I have been around Belt's.

Q. Do you know the value of those cattle at the time the levy was made?

Mr. HUTCHINGS: We object.

The COURT: Let the evidence go in subject to its exclusion by the court hereafter.

To which ruling of the court plaintiffs by their counsel then and there excepted.

A. About eight or nine dollars a head.

Q. Were there any cattle sold on the day that Mr. Hutchings had the sale made?

A. Yes, sir.

Q. About how many?

A. Twelve or thirteen head.

Q. Were they sold as the property of John Belt?

A. Yes, sir.

Q. Were they a portion of the cattle that had been transferred to you in this deed?

A. Yes, sir.

Q. Do you know about what they brought?

A. No, sir, I don't remember.

Mr. HUTCHINGS: Counsel for plaintiff move to strike out all of the foregoing answer relating to the cattle because neither said cattle nor the proceeds of the sale of any part thereof is in the custody of this court under an attachment or other process sued out in the cases, or any of them represented by counsel who are parties to the written agreement in this case. Secondly: Because if said cattle were levied upon and were never released that the interpleader herein, can only have judgment for the possession of the cattle as they stand now and not for their value. Thirdly: That the cattle were never levied upon under the writ of attachment sued out in this case or in any of the cases in which the plaintiffs are parties to this agreement.

But the court refused to sustain said motion and plaintiffs by their counsel then and there excepted.

34 Cross-examination.

By Mr. HUTCHINGS:

Q. Mr. King, I understood you to state that there were some cattle sold under the sale made by myself, as you term it?

A. That was my recollection, yes, sir.

Q. Can you say that I had anything to do with the sale of that livery stock?

A. Yes, sir, my recollection is that you ordered the cattle sold yourself. Something was said about some fees coming out of those cattle some way or other.

Q. What sort of fees?

A. I don't remember now, it has been so long ago.

Q. At what time in the morning was the storehouse and the stock of goods sold?

A. Near as I can recollect, it was ten or eleven o'clock.

Q. At what time in the day was the livery stable and cattle and the horses sold?

A. In the afternoon.

Q. Three or four o'clock?

A. Yes, sir, I judge between two and four o'clock.

Q. What was the reason Mr. Genung didn't go right on and offer and sell the horses and cattle immediately after he had sold the merchandise?

A. He was waiting for some instructions from Muscogee. That's my recollection.

Q. Don't you know and didn't he state that that property wouldn't be sold at all unless he received instructions from other attorneys at Muscogee to sell it?

A. No, sir, I don't know anything about that.

Q. From whom did he expect any instructions?

A. I suppose from some attorneys or the marshal, something of the kind.

Q. If he had expected any from me he was within a very few feet of me and could have gotten them, couldn't he?

A. Yes, sir, you were on the premises.

Q. As to the gray mares and the buggy you state that they were the property of your sister Mrs. Belt. Will you state to the court and jury how they became her property?

A. I don't know as to how they became her property. I have heard her speak of having them, at our house in Fort Smith, of having such a team at Eufaula.

Q. How long before Mr. Belt's failure did she become the possessor of that team?

A. I couldn't tell you that sure. Possibly two or three months.

Q. Two or three months before he failed she became the possessor of a nice pair of gray mares and a new buggy didn't she?

35 A. It may have been longer. I don't remember about the time.

Q. Did you read Belt's deed when he passed it over to you?

A. No, sir, I don't know that I read it except as it was written out.

Q. You did read it just like it was written, did you?

A. Yes, sir.

Q. Did you discover that he claimed as his own exemption on those gray mares and that buggy?

A. Yes, sir, we discovered that in the deed.

Q. Did you say anything about it?

A. Yes, sir, it was spoken of the night the deed was drawn.

Q. Were you present when the deed was drawn?

A. Yes, sir, that is the winding up of the deed.

Q. You were present before it was delivered to you?

A. Yes, sir.

Q. Before it was signed?

A. Yes, sir.

Q. Did you read it before it was signed?

A. No, sir, I can't say that I did.

Q. You discussed it all over before it was signed, didn't you?

A. No, sir, I don't remember that we did. I remember the pe sonal-property question came up that night we were winding u the deed.

Q. And you were present in the room?

A. Yes, sir.

Q. Where was Mrs. Belt?

A. In Fort Smith.

Q. At that time?

A. Yes, sir.

Q. Where was that deed made?

A. It was made in Eufaula.

Q. Did they talk to you anything about making it at For Smith?

A. No, sir.

Q. How did it happen that you came up to Eufaula?

A. Well, I say they didn't talk to me anything about it,—Bel simply mentioned the matter to me that he would make the dee of assignment and asked me if I would accept the position of as signee and he told me if he did he would telegraph me when to come

The COURT: From whom did Mrs. Belt purchase this carriag and team?

A. I think she traded some other property to Mr. Belt for it.

Q. Purchased it from Mr. Belt by giving some other property?

A. Yes, sir.

Mr. FORRESTER: Your sister had some means of her own fro her father's estate?

A. Yes, sir.

Q. Where is she now?

A. She is in Greenwood, Arkansas.

Q. What is she doing?

A. Teaching school.

Q. Her health has been very bad, hasn't it?

A. Yes, sir.

36 JOHN BELT, being duly sworn, testified as follows:

Direct examination.

By J. C. HODGES:

Q. Mr. Belt, you are the person who executed this assignmen deed to Mr. King?

A. Yes, sir.

Q. You remember a pair of gray mares and buggy and harnes that was levied on by Mr. Needles that was mentioned in this dee of assignment to Mr. King?

A. Yes, sir.

Q. I will ask you to state to the court whose property they wer at that time?

A. My wife's.

Q. You might state to the jury how she came in possession o them?

A. She had a bay pony horse and she traded the horse she had for them two gray ponies.

Q. Where did she get that horse?

A. She got the horse—I bought the horse—I don't remember the fellow's name I bought the horse from. I can't tell his name just now.

Q. I want you to tell how she come to own the horse?

A. She traded a colt she had when it was a year old for this horse kept it until it was three years old and traded for this horse. Grayson Brothers have the horse now.

Q. The colt was bought with money which belonged to her when she married you?

A. Yes, sir.

Q. Then the proceeds of that were traded into these two gray mares?

A. Yes, sir.

Q. How did she get the buggy?

A. I gave her the buggy.

Q. At one time you owned a livery stable?

A. Yes, sir.

Q. How long before breaking did you give her this buggy?

A. I am not sure as to the month. About the time I started up in the livery business there in March or April, 1891.

Q. During that year had she controlled these horses and buggy and harness?

A. Yes, sir, I gave her the harness too.

Q. She bought the ponies herself?

A. Yes, sir.

Q. She took charge of them as her own property?

A. Yes, sir, they were never used as a livery-stable team at all.

Q. Now this property which was situated in a room of the hotel at Eufaula consisting of two bedsteads—one bed-room set and bedstead—such articles you remember, whose were they?

A. They were hers, and a carpet too. She bought them
37 with her own money. I think she got fifteen or sixteen hundred dollars soon after we were married and bought these things herself.

Q. So these things were hers?

A. Yes, sir.

Q. A portion of them were bought as her separate property and the others as you describe?

A. Yes, sir.

Q. How many cattle did you have on the range there about the time you made this assignment?

A. Somewhere about two hundred head. I don't know just exactly. Might have been more and there might have been less. I don't remember exactly.

Q. They were cattle transferred to King in this deed of assignment?

A. Yes, sir.

Q. Do you remember whether the officer took any of those cattle into his possession or not?

A. I know he sold some of them.

Q. How many?

A. Thirteen head.

Q. Was a portion of those sold mentioned in the deed of transfer?

A. They were.

Q. What were those cattle worth per head?

A. A good many of them were cows and calves and I sold a number of cows and calves that year for fifteen and twenty and as high as twenty-five dollars apiece.

Q. On an average what were they worth?

A. Average all run about ten dollars.

Q. The cash value at that time as cattle were?

A. Yes, sir.

Q. Was your wife engaged in school-teaching before you broke or made this assignment?

A. She taught school awhile after we were married—soon after we were married.

Q. What amount of money does she earn when she is teaching school?

A. The last she taught school in ninety-three and four, I think she earned somewhere between fifty and sixty dollars a month.

Q. You say she received fifteen or sixteen hundred dollars soon after you were married?

A. Fifteen or sixteen hundred dollars, I don't remember just how much money she got now.

Q. I will get you to state if any time after the deed of assignment there was anything said about this property being your wife's?

Mr. HUTCHINGS: Counsel for plaintiffs object to this question because all acts and words of an assignor subsequent to the execution of a deed of assignment are incompetent to validate or invalidate or vary the deed of assignment.

38 The COURT: I think the witness may answer whether anything was said but not state now what it was until another question is presented. The objection is overruled.

To which ruling of the court plaintiffs by their counsel then and there excepted.

A. There was.

Q. Was that while the inventory was being made or when?

A. That was after the deed had been made.

Q. Was the inventory complete or were you then working on the inventory?

A. I think they were working on the inventory at that time. The deed had been executed before that.

Q. State how this property just now claimed by your wife happened to be put in this deed?

A. Mr. Nichols asked me.

Q. Who is he?

A. He is the attorney who drew up the deed.

Continued direct examination by Mr. BRIZZOLARA:

Q. He was at Eufaula was he?

A. Yes, sir. He asked me to tell him all the property we had. Of course I gave this in. I don't know whether he meant all the property I had. I asked him if he meant everything we had and he said, "Yes, everything you have."

Q. And afterwards making the inventory the question came up with reference to this that belonged to your wife?

A. Yes, sir.

Q. If the attorney was present then what did he say?

A. He said it didn't make any difference any way, I was liable to my exemption.

Q. You say the way it went in was by telling you to give a list of all you had?

A. Of all we had.

Q. Did you say anything to Mr. King at this time about this being your wife's property?

A. I think he was there. It was Mr. Nichols I spoke to. I think Mr. King was present.

Cross-examination.

By Mr. HUTCHINGS:

Q. Who made the trade for those gray mares?

A. I did.

Q. Where was your wife at the time you made the trade?

A. She was at Eufaula.

Q. How much boot did you give?

A. Didn't give any.

Q. You gave her this one horse for them?

A. I gave her the one horse for the two ponies.

Q. You know what time you paid for or traded for them?

A. I don't remember whether it was in March or April; I don't remember the month.

39 Q. Don't you know it was as late as June or July?

A. No, sir.

Q. What was the name of the man you traded with?

A. The man's name that I traded with was Cheney.

Q. How many times during that year was Cheney at Eufaula with horses?

A. Several times. I don't remember how often he was in there.

Q. Which time did you trade with him, the first, second or third time he was there?

A. I don't remember what time it was. I couldn't say. I never took any bill of sale or anything. I don't remember. I never taxed my mind with it.

Q. Didn't you state at the time you went in to look at the horses that you yourself were going to buy them for your wife?

A. No, sir, not that I remember. She went to the lot and looked at the horses herself before I made a trade for them.

Q. You were doing at that time a very large and apparently successful business were you not?

A. Yes, sir, I thought so.

Q. Did you give her the buggy before you traded for the horses or afterwards?

A. I think that I gave her the buggy before we got this span of ponies; that's my recollection.

Q. If so, about how long beforehand?

A. I couldn't say.

Q. There couldn't have been a very great difference of time could there, a week or two or such a matter?

A. I don't know about that.

Q. Whose wearing apparel was that that you mentioned worth forty dollars?

A. Wearing apparel, I suppose that was mine.

Q. That was your wearing apparel?

A. Yes, sir.

Q. Whose gold watch was it you mentioned worth twenty-five dollars?

A. It was mine.

Q. Did you own any household goods whatever?

A. Yes, sir, I had a reclining chair there that I got free with cigars.

Q. You put that in Schedule C?

A. Yes, sir, I think it is; I am not sure.

Q. There is a reclining chair in it?

A. Well, that's the chair.

Q. I will now call over as they are itemized these household articles and say which were yours and which were your wife's. A bedstead?

A. My wife's.

Q. Two center tables?

A. They were hers.

Q. One carpet?

A. That was hers.

Q. Two rocking chairs?

A. They were hers.

Q. One trunk?

40 A. Well, now I had a trunk, one trunk, and I think she had two in the room, I am not sure, I think possibly she had two, I am not sure about that, but I had a trunk.

Q. Then when the man asked you to give all the property that you had you left out some of hers?

A. I might have overlooked something, I don't know.

Q. You know at the time there were three trunks in that room, do you not?

A. I am not positive whether there were three trunks in the room or not. She was in Fort Smith and might have had one trunk with her.

Q. One thing is sure, you had one trunk in there?

A. Yes, sir.

Q. There are two lamps, whose were they?
A. I don't remember about the lamps, what kind of lamps they were.
Q. They were not gold lamps?
A. I guess not. I don't remember ever seeing anything of that kind.
Q. They were brass lamps of the kind you would take out of the store?
A. I know there was one very nice hanging lamp. That was hers, I know.
Q. Let's see if you cannot think about how many lamps you had in the house?
A. I don't remember whether there was more than one lamp in there or not.
Q. There were three chairs in the room—ordinary chairs I presume—whose were they?
A. I know one chair, a reclining chair, was the only chair I had. The other chairs were hers.
Q. Didn't you have about what money she had in your business?
A. No, sir.
Q. Never had it in your business?
A. I have had but not at that time. She speculated in town property, took it out and put it in Fort Smith property, a good deal of it.
Q. I will ask you if shortly after your failure in coming on the M. K. & T. train on your way to Eufaula you didn't meet Mr. C. H. Tully and in discussing your failure you didn't state something to this effect, that your wife was a little hard on you now after your failure, that you had used her money in your business and now that you had been unfortunate that she thought you ought to have protected her in making this failure?

Mr. HODGES: We object, no relevancy in the case. If he
41 wishes to lay a predicate for the purpose of impeaching the witness it does not predicate it at all. It has no relevancy to the case. It must be in the case.

The COURT: It is competent in cross-examination to show that a witness has made statements at other times which would contradict those he makes now about the same transaction. The objection is overruled; the question can be answered.

A. No, sir.
Q. About how long have you been doing business in Eufaula?
A. I opened up there about the twentieth of December, 1890.
Q. What were your liabilities when you opened up there in December, 1890?
A. I don't remember.
Q. What were your liabilities in the month of March or April of the year 1891, the year of your failure?

Mr. HODGES: We object.
The COURT: The objection is overruled.

A. I don't remember.

Q. Were you largely indebted at that time?

Mr. HODGES: We object. It is irrelevant.

The COURT: Objection overruled.

A. Yes, I owed some money.

Q. How much more did you owe at the time of your failure than you did then?

A. Considerable.

Q. How many more assets did you have at the time of your failure than you had along in March or April of that year?

A. I don't remember hardly. We got up a little war in Eufaula at that time and a good many of us lost a good deal of money.

Q. That was along during the summer was it not?

A. Which was in the summer?

Q. When you had that Eufaula war?

A. I don't remember. There was war a good deal of the time.

Mr. FORRESTER: War among the merchants?

A. Yes, sir, on prices, cut and slash.

Q. When did you borrow the one thousand dollars of your mother Mrs. M. J. Belt secured in the deed?

Mr. HODGES: We object.

Mr. HUTCHINGS: I am simply trying to show that he had no right to make a gift to his wife when he was insolvent.

42 The COURT: I have ruled that every question that goes to establish that fact is proper. The objection is overruled.

A. I don't remember the date of that. The note will show. I think it was after I went to Eufaula. As well as I remember it was along in August or possibly September, 1891. It was just after she had sold a farm she had down in Arkansas that I got the money from her.

Q. About what time was the debt of one thousand dollars owed A. J. Belt contracted?

A. Along about the same time, not far apart.

Q. Who is A. J. Belt?

A. He is a brother of mine.

Q. Who is Al Belt?

A. He is a brother of mine.

Q. About what time was the debt of $1,915.50 secured in the deed to Al Belt contracted?

A. I got this money about the time I was building this store building at Eufaula. I don't remember just when it was; along in July, August or September; I don't remember the month but that is the time I got the money, when I was building at Eufaula.

Q. Where are the mercantile books which you used in your business at Eufaula from the time you went there to your failure?

Mr. HODGES: We renew our objections again.

The COURT: If the facts are set forth in books which are competent here the question is competent. The attorney has the right to call for facts which are in the knowledge of the party which are

relevant in this case and those facts which show his financial condition at this time are relevant. The objection is overruled.

A. The assignee took charge of the books.

Mr. HUTCHINGS to Mr. King: Where are Mr. Belt's mercantile books which he turned over to you?

(By Mr. KING:)

A. They are at Brooking or Eufaula.

(Here at 12 m. the court took a recess until 2 p. m.)

FRIDAY, *September* 20, 1895—2 p. m.

Continued cross-examination of Mr. JOHN BELT by Mr. HUTCHINGS:

Mr. HODGES: We abandon our claim for this case of title to cattle as set up in the interplea.

Q. Did you order that buggy direct from the manufacturers, Mr. Belt, or take it out of your stock?

A. Yes, sir, I bought it and two others at the same time.

Q. Did you have a place in your store where you stored buggies?

A. No, sir.

43 Q. What were the other two buggies bought for?

A. Bought for the livery business.

Q. How long after you got the ponies before they were able to be worked?

A. Mr. Cheney—I don't think it was Mr. Cheney who was there—it was a partner of his—he worked one of the ponies the evening we traded; he worked one of them the first evening and possibly both of them, one at a time.

Q. Where was your buggy the first time?

A. It was in the shed-room of the old stable.

Q. Had you hitherto kept your buggy there?

A. No, sir, I had kept my buggy in the new stable.

Q. Where was your old stable?

A. You know where the old stable was; you know where the new stable was; it was an old stable northwest of the new stable; it was north and west of the Arkansas hotel then.

Q. What had you been using that old stable for?

A. Before I went into the new stable I went into the livery business, but afterwards we had some feed in there and we kept this gray team and the buggy was inside of the shed.

Q. Did you remove the buggy to the new stable at any time before your failure?

A. I don't think it was ever taken over there; I am not positive; I know I didn't use it as a livery buggy.

Q. How long before the ponies got so your wife could drive them?

A. It was some time before they were gentle enough for her to drive them alone.

Q. Who drove them during that time?

A. I drove them most of the time myself, generally drove them myself.

Q. How many times do you reckon that she ever drove them herself?

A. I don't know how often. She drove them whenever she got ready after they were gentle. I didn't keep any count of the number of times.

Q. Have you refreshed your memory any since you have been out as to the time at which you traded for these gray ponies?

A. No, sir, I haven't.

Q. Have you as to your indebtedness and financial condition about the time that they were purchased?

A. Well, I don't remember when I made my last report, but the best of my recollection is that my assets were nine to ten thousand above my liabilities.

Q. About what were your liabilities?

A. At what time?

Q. At about the time you gave your wife this buggy?

A. Well, that is the time I speak of. I don't remember though.

44 Q. Did you owe five thousand dollars?

A. Yes, I guess I owed—it seems to me I owed something like ten or twelve thousand dollars, and my recollection is that I had twenty to twenty-two thousand dollars' worth of property.

Redirect examination.

By Mr. HODGES:

Q. You state that of the items mentioned herein in Schedule C, bracket 2, the reclining chair was yours?

A. Yes, sir.

Q. And here are two lamps, $1.50, you don't know positively whether one was the lamp taken from the store or both belonged to your wife?

A. I couldn't say.

Q. You say one trunk of the value of five dollars, you say perhaps that was your trunk?

A. Yes, sir, I had a trunk in that room.

Q. The other articles belonged to her?

A. Yes, sir.

Q. Reclining chair valued at three dollars?

A. Yes, sir.

Q. Was that about the value of the chair?

A. Yes, sir, I guess so. It didn't cost me anything, given me as a premium or something of that sort.

Q. The trunk, five dollars, was it worth five?

A. Something like that.

Q. And two lamps $1.50?

A. The lamps I don't——

Q. What were those two ponies worth at the time you traded for them wild as they were; worth about thirty dollars apiece?

A. Yes, sir.

Q. Were they wild?

A. They were perfectly wild. I don't suppose they ever had been caught except at the time they were branded.

Q. At the time you gave this buggy to your wife, were you solvent or insolvent?

A. Solvent.

Q. When did you build that big storehouse, after or before you gave your wife the buggy?

A. Some time after.

Q. What did the house cost you?

A. Forty-five hundred dollars.

Q. What did the lot cost you?

A. I paid either twelve or twelve-fifty, one or the other.

Q. This house was all built and paid for after you made this gift to your wife?

A. Yes, sir.

Q. Did you build this house to merchandise in?

A. Yes, sir.

Q. Was it one or two stories?

A. It was a double-decked building. I suppose you might call it two stories.

Q. Do you remember the width and length?

A. Thirty feet wide and a hundred and four or a hundred and twelve feet in depth.

45 Q. You were dealing there purchasing and selling goods at the time you were building this house and building this house for the purpose of merchandising in, and all this was done after you made the gift to your wife and you were perfectly solvent?

A. Yes sir.

Q. Do you remember at the time you made the assignment about the amount of your liabilities all told?

A. About thirty thousand dollars were my assets and twenty-five thousand liabilities.

Q. Assets consisted in the stock of goods, storehouse and other property mentioned in that deed of assignment?

A. Seven lots in Fort Smith and other lots in Genson.

Q. Two hundred head of cattle?

A. Yes, sir, and notes and book acounts.

Q. You remember now about the time you built that house?

A. It seems to me I began in August or September; I am not sure of the month, in the year 1891.

Q. After you built the house you gave the buggy to your wife?

A. Yes, sir, I am sure of that.

J. R. PIERCE, being duly sworn, testified as follows:

Direct examination.

By Mr. HODGES:

Q. Where do you live?
A. At Texana.
Q. Do you know J. C. Belt?
A. Yes, sir.
Q. Any relation to him in any way?
A. None at all.
Q. How long have you lived down in that country?
A. Eighteen years.
Q. What do you do?
A. Selling goods now.
Q. Do you know Mrs. Belt?
A. Yes sir.
Q. Do you know the gray mares and buggy involved in this litigation?
A. Yes sir.
Q. Buggy horses or ponies?
A. Ponies.
Q. You know who they belonged to?
A. Mrs. Belt, I reckon. Always claimed as hers, and Mr. Belt wouldn't hire them out.
Q. How long before the assignment did you know he wouldn't hire them out?
A. I never did know him to hire them out.
Q. They were recognized and known as hers?
A. Yes sir.
Q. And Mr. Belt wouldn't hire them out because they were his wife's?
A. Yes sir.

Cross-examination.

By Mr. HUTCHINGS:

Q. You live at Texana, I understand?
A. Yes sir.
Q. About how often did you go to Eufaula?
46 A. About once a week.
Q. Ever have to hire any horses from Mr. Belt?
A. No, sir; I had plenty of my own.
Q. Didn't have to hire at any time?
A. No sir.
Q. Do you know about what time those horses got so Mrs. Belt could drive them?
A. No sir; I don't.
Q. You don't know what time they came into the Belt family?
A. It was in the spring some time; I don't remember just the month.

Q. Do you remember when Cheney was in that country with horses for sale?
A. I remember Cheney being around Eufaula.
Q. Do you recollect the time of year he was there?
A. I think it was about May or June, as well as I remember.
Q. About May or June?
A. I think so.
Q. You and Mr. Belt were very intimate friends, were you not?
A. Yes sir.
Q. He took you down there to show you what a nice turnout he presented to his wife, didn't he?
A. No sir; I don't know as he did.
Q. Did he tell you he would not rent out that team because he gave it to his wife?
A. I think she bought that—the buggy and team.
Q. With her own money?
A. Yes sir.
Mr. HODGES: You don't know of your own knowledge about the purchase of the horse and buggy?
A. No sir.
Mr. HUTCHINGS: Did you ever hear anybody speak of those horses and buggy as being Mrs. Belt's except Belt?
A. Yes, I have heard the boys around the stable.
Q. Speak of them as Mrs. Belt's horses?
A. Yes sir.
Q. And buggy?
A. Yes sir.
Q. At the old livery stable or the new one?
A. At the new one.
Q. The horses and buggy were at the new one, weren't they?
A. Yes sir; they were there part of the time.
Q. And it was at that stable you heard the boys say they wouldn't rent them out and that they were Mrs. Belt's?
A. Yes sir.

Redirect examination.

By Mr. HODGES:

Q. The balance of the time they were at the old stable?
A. Yes sir.
Q. You ever know of Mrs. Belt claiming them?
A. Yes sir.

47 AL BELT, being duly sworn, testified as follows:

Direct examination,

By Mr. FORRESTER:

Q. What is your name?
A. George A. Belt, commonly known as Al Belt.
Q. You are the brother of John C. Belt?
A. Yes sir.

Q. You know his wife, Telia Belt?

A. Yes sir.

Q. The proof here shows that your brother and sister-in-law lived at Eufaula in 1890 and '91 and your brother was engaged there in mercantile business. Do you know a couple of gray mares that were there during that period?

A. Yes sir.

Q. Do you know the mares that are in dispute here?

A. Yes, sir; I suppose so.

Q. The two mares included in this assignment about which they claim there is a mistake?

A. Yes sir.

Q. Whose property were they?

A. My understanding was that they belonged to John's wife.

Q. Do you know anything about the buggy and harness?

A. All I know about it is I was up along in the latter part of the summer of 1890 and Telia loaned me her buggy and team two or three evenings to go out driving.

Q. They were spoken of as hers?

A. Yes sir.

Q. Have you ever heard her say anything about it?

A. Yes, I have heard her say it; told me how she got them.

Cross-examination.

By Mr. HUTCHINGS:

Q. Are you not mistaken about being up there in the summer of ninety?

A. It was along in the latter part of the summer of ninety. I know it was before the Tipkins trial. I don't remember the exact date. It was while J. C. was in business there. When was the assignment made?

Q. In December, ninety-one.

A. Then it was the summer of ninety-one.

Q. How many times during that year were you up there?

A. I am not positive, but I think I was up there a couple of times one trip two or three, four or five days, I don't remember.

Q. Where were those ponies and buggy kept at that time?

A. In the stable, I suppose.

Q. Do you remember where the stable was situated?

A. I suppose they were kept in Jim Belt's livery stable. In fact, I never rigged the ponies up either time. The ponies were brought down to the store and I took them from there.

48 Q. Jim Belt didn't own the store at that time?

A. I don't know; I don't believe he did the first time I was up.

Q. Jim Belt bought John Belt's livery business out about two weeks before he failed, didn't he?

A. It was longer than that. It seems it was a month or such a matter before he failed; I don't remember.

Q. In any event the horses were kept in John Belt's livery stable?

A. I suppose they were, yes.
Q. Fed and harnessed by the men John Belt kept at his stable?
A. I don't know about that. I don't know who fed them or took care of them or anything of that kind.
Q. When you wanted them you asked Mrs. Belt if you could have them?
A. Yes sir.
Q. Right pretty little team, wasn't it?
A. Yes; right pretty little team.

J. R. RANSOM, being duly sworn, testified as follows:

Direct examination.

By Mr. HODGES:

Q. Where do you live?
A. Eufaula.
Q. Do you know John Belt?
A. Yes sir.
Q. Are you a relative of his?
A. Yes sir.
Q. What relation?
A. Cousin.
Q. Did you work in his store down there in 1891?
A. Yes sir.
Q. What time of year did you go there and commence work?
A. In December, as well as I remember.
Q. Of what year?
A. Ninety.
Q. Were you there during the summer of 1891?
A. Yes sir.
Q. Where did you board?
A. At the Eufaula house.
Q. Did Mr. John Belt and wife board there?
A. Yes sir.
Q. Do you know a little gray team, two little mares that were handled around there by the Belts?
A. I do.
Q. Do you know who claimed them the summer before the assignment in December?
A. Mrs. Belt always claimed them. I came there in May or June, one. She claimed them after that time.
Q. How did she claim them; how did you understand she got them?
A. As well as I remember she traded a saddle horse she had for them.
Q. Do you know the saddle horse she traded?
A. Yes sir.
Q. Was the horse she traded for them her horse?
A. Yes sir.

49 Cross-examination.

By Mr. HUTCHINGS:

Q. How long have you known Mr. and Mrs. Belt?
A. Known Mr. Belt about all my life, I reckon.
Q. How long have you known Mrs. Belt?
A. Ever since 1889.
Q. You were intimate friends when you went there to work, were you not?
A. Yes sir; Belt and I were; I had never met his wife before.
Q. You know who made the trade for those gray mares?
A. Who first bought them?
Q. Yes.
A. No sir, I don't. I wasn't there at the time.
Q. Did you ever see Mr. Belt drive them?
A. Yes sir.
Q. How often?
A. I don't know.
Q. Did you ever see Mrs. Belt drive them?
A. Yes sir.
Q. How often by herself?
A. I don't know; I never kept any count. I saw her often though.
Q. The horse that was traded for them was a saddle horse?
A. Yes sir.
Q. Was Mrs. Belt fond of riding horseback?
A. Rode horseback a good deal.
Q. And that was her saddle horse?
A. Yes.
Q. Do you know where she got it?
A. She bought it from Carr at Brooking when Mr. Belt was in the mercantile business.
Q. Did Mr. Belt go from Brooking over to Eufaula to engage in the mercantile business?
A. Yes sir.

C. H. TULLY, being duly sworn, testified as follows:

Direct examination.

By Mr. HUTCHINGS:

Q. Where do you reside?
A. Up at Eufaula.
Q. What business are you in?
A. Mercantile.
Q. Who are you in business with?
A. Mr. C. E. Foley.
Q. How long have you been living at Eufaula?
A. It will be six years this September, the last part of it.
Q. Were you residing and doing business there all of the year Mr. Belt was there?
A. I was working for Mr. Foley part of the time.

Q. How much of the time were you in Eufaula?
A. All of the time. I was a clerk part of the time.
Q. Did you know of a team consisting of a pair of little gray mares and buggy, etc., that were in the possession of the Belts during that year or any part of it?
50 A. Yes sir; he had a team of gray mares and buggy.
Q. Whose property was that considered to be by the residents of Eufaula?
A. I couldn't speak for the residents of Eufaula.
Q. Whose was it supposed to be?
A. I supposed it to be his.
Q. Did you ever hear anybody speak of it as being anybody else's team but Belt's?
A. Not until after this assignment was made I hadn't.
Q. Did you hear Mr. Belt after the assignment was made, Mr. Tully, coming down on the railroad train one night make any statement relative to his being indebted to his wife or having used any of her money in his business?
A. It was not in the night, it was in the daytime.
Q. What did he say about it?
A. I don't remember his words verbatim. He spoke of his wife having some property and when he was closed out he had used his money and wanted it at that time and she wanted it and pressed him as much or more so than his creditors, and wanted her money and wanted it then.

Cross-examination.

By Mr. HODGES:

Q. Do you know whether he paid it or not before he closed out?
A. No sir.
Q. You didn't learn from his talk whether he was indebted to her at the time or before?
A. Well, his talk was that he was indebted to her before.
Q. Those gray mares and buggy you know nothing at all about the ownership except you supposed them to be Belt's.
A. I saw him driving them around and the supposition was they were his property.
Mr. HUTCHINGS: At the time the conversation was had with Mr. Belt he told you that his wife was pressing him since his failure for what he owed her more than the other creditors?
A. Yes sir, as much or more so.
Mr. HODGES: Do you mean to say that in his talk to you he said she pressed him for the money he had of her- before the assignment?
A. Mr. Belt and myself were coming from Kansas City. We met on the train and got into conversation about the failure. In the conversation he told me he had used some of his wife's money and I don't remember, but something of her property, I don't remember exactly, but in that conversation he said at the time of his failure and afterwards she had been after him to get this money from him

and to pay it over to her. But that conversation was after the assignment, some time after.

51 Q. He claimed to you that he owed his wife?

A. Previous to the assignment, but she wanted her money.

Q. Do I understand you that Belt owed his wife since the assignment, or did you understand that before the assignment she pressed him?

A. No, she pressed him after the assignment, but it was for what he was owing before the assignment.

Q. So that as you got it, he is indebted to his wife now?

A. I don't know whether he is or not.

Q. Then according to your understanding Belt owed his wife a lot of money at the time of his assignment?

A. He didn't say how much, but some money, and she had been pressing him for some money.

—. ——?

A. Yes, sir.

Q. And that was after the assignment is the way you got it from Belt?

A. Yes, sir.

Mr. FORRESTER: We desire to move to strike out the testimony of the last witness on the ground that it is irrelevant and incompetent in relation to the conversation with Belt on the train.

The COURT: The court is of the opinion that the evidence of this witness was relevant to the issues joined in this case and it should stand as a part of the evidence in the case, and overrules the motion to strike it out.

Mr. FORRESTER: We desire to except to the ruling of the court in overruling our motion.

In Rebuttal.

J. C. BELT, being recalled, was examined by Mr. Hodges as follows:

Q. Do you remember coming from Kansas City with Mr. Tully?

A. Yes, sir.

Mr. JACKSON: We object.

The COURT: The witness' attention was called to this conversation so as to identify the particular conversation to which reference was made, and it was then his privilege to state all that he could on that subject and that closed his right and of the party introducing him to any further evidence on that conversation. It was then the privilege of the other side to call the witness with whom the conversation was had and let the case rest. Any further testimony on that subject is inadmissible. It was the duty of the attorney introducing this witness in the first place when his attention was called to a certain conversation to have his witness state all that he wanted to state in regard to it. Having had notice of the conversation by fixing the time and place, after the witness has

52 then made a statement in regard to it, it is competent for the witness with whom the conversation was had to make his

tatement in regard to it and there the matter rests and there is as ar as we have gone. It is not competent to recite what he said at former time. The object of this evidence is to show that the wife vas a creditor of the husband. It seems to me that the substance f the matter was so called to his attention and he had a right to say what he did say. There was nothing about which Mr. Hutchings ould examine him further. Therefore, he was not required to press im further. He had no conversation to that effect. If he had aid, "I did have a conversation with him on that subject" Mr. Hutchings could have examined him as to what he did say.

Mr. HODGES: We reserve an exception on the ground of the court refusing to hear the testimony of J. C. Belt in regard to conversation between himself and Tully because Tully's answers to the questions were not in substance or effect on the predicate previously laid.

Q. Did you state a while ago whether or not you owed your wife at the time you made the assignment?

A. I don't remember whether I did or not. I don't remember whether that question was asked or not.

Q. Were you not indebted to her at the time you made the assignment?

A. I was not.

Q. Had you owed her shortly before that?

A. Some time before that.

Q. Had you paid her?

A. Yes, sir.

Q. Did she claim that you owed her anything after that assignment?

A. No, sir.

Mr. HUTCHINGS: Attorneys for the plaintiffs now after the close of all the testimony move the court to direct the jury to return a verdict in favor of J. M. Robinson & Company.

Mr. FORRESTER: We desire to move the court to direct the jury to find the issues in this case for the interpleader C. M. King; and second, that the jury be instructed under the proof and the evidence in this case that they should find the value of the property to be the sum of $12,549.49.

The COURT: If the court should be of the opinion, after hearing the argument, that the subject-matter in controversy is the fund which is in court, that will be a legal question, and the court will instruct the jury accordingly.

To the refusal of the court to sustain plaintiffs' motion to direct a verdict, plaintiffs by their counsel then and there excepted.

The court, after argument, took a recess until Saturday, September 21st, 1895, at 9 a. m.

53 SATURDAY, *September* 21, 1895—9 a. m.

Mr. HUTCHINGS: Attorneys for plaintiff here move the court to permit them to offer the records of the clerk and such other evidence

as may be legal to show that the proceeds of the sale of the property attached in this action are not now in the custody of the court or any of its officers, but was distributed under an order of this court in this case to the creditors who were parties to the agreement in this case and to this suit, and that such distribution was made subsequent to the 15th day of December, 1893.

Mr. HODGES: We object to the introduction of any additional evidence because the evidence was closed and one argument was made; because counsel have not stated that it was through any inadvertence or oversight that they failed to introduce their evidence at the proper time; because it appears that it was evidence that might have been introduced at the time evidence was being introduced and hence the court ought not now to exercise discretion to reopen the case; because under the pleadings in this case there are but two issues of fact, the value of the property and the ownership of the property claimed to be the property of Mrs. Belt. The evidence now offered is not pertinent to either of those issues, hence irrelevant. There is no pleading in the case to admit the evidence now offered if the evidence hadn't already closed.

The COURT: The evidence having been closed by both parties additional evidence could only be admitted as a matter of discretion on the part of the court. It seems to me that this evidence is quite as important to the attorneys for King as it is for the attorneys for Robinson. The only object I can see now for introducing this would be to guide the court in any judgment it might give. The court could not issue an order upon the clerk to pay out this money, because the clerk has been ordered to pay it out to somebody else and a proper judgment couldn't be entered in that view of the case without knowing the parties against whom it should be entered. The clerk hasn't these funds and has paid them out in pursuance of the order of the court, so that this evidence does not go to the merits of the case as to whether King is rightfully entitled to this property by virtue of the deed of assignment, but solely on the part of the court as to what kind of a judgment should be entered in this case and may be entered after the question of fact had been determined to guide the court as to its judgment. This is a question which does not affect the fact in one way or the other as to the property of King by virtue of the deed of assignment, therefore it could in no way prejudice Mr. King. In fact, it seems to me it would aid him in learning where he is.

54 I agree with counsel that the objection should be sustained at this time to the introduction of this evidence from the fact that it is not relevant to any question submitted at this time.

So far as the jury at this time is concerned it is mere issue of fact relating to the validity of this deed and the ownership of the property. The court is of the opinion that the evidence is irrelevant at this time, but before the final judgment may be entered it is possible that the court might ask the records of the court to be submitted to know what had been done and at that time if it should become relevant the court will ask the record to be submitted. If you intend

to plead that the case has been adjudicated, that it is *res adjudicata*——

Mr. HUTCHINGS: No, we do not maintain that.

The COURT: These facts do not tend to show whether the deed of assignment was void or not or whether the ownership was in King or his wife and therefore it is a matter which has occurred during the pendency of the case in the court.

Mr. HUTCHINGS: Counsel for plaintiff excepts to the ruling of the court in refusing to admit the testimony.

The COURT: This ruling was not made by reason of the time at which the evidence was offered, but by reason of the fact that it would have been excluded if it had been offered at any time.

From this time, 11 a. m. the court heard argument of counsel until 12 m. at which time a recess was taken until 2 p. m.

At 2 p. m. the court met pursuant to adjournment and the rest of the day was occupied with the argument, and at its conclusion a recess was taken until Monday, September 23, 1895.

MONDAY, *September* 23, 1895.

Pending the argument addressed to the court on legal questions and before the case was submitted to the jury the attorney for J. M. Robinson & Co., asks leave to amend his answer heretofore filed in this case by inserting therein the following:

"The plaintiffs further answering say that interpleader could not recover in this case because the fund for which the property was sold and which was in court at the time the interplea was filed herein, has been distributed amongst the attaching creditors of said assignor Belt in accordance with the judgment of this court entered in this case on the 16th day of December, 1893, which is as follows:

55 J. M. ROBINSON & Co., Plaintiffs,
vs.
J. C. BELT, Defendant; C. M. KING, Interpleader. } 1285.

Now on this day this cause came on to be heard upon plaintiff's' demurrer to the interplea of C. M. King, assignee of J. C. Belt, the defendant herein, for the property in controversy in this cause, and the court having heard the arguments of counsel both for and against the same and being fully advised in the premises, doth sustain said demurrer to said interplea. To which action of the court the counsel for said interpleader C. M. King except in open court, and the said interpleader, C. M. King, failing and refusing to plead further, the court doth find that the said property in controversy is not the property of said C. M. King, and that he is not entitled to the same, to which action of the court, counsel for said C. M. King except in open court, and it further appearing to the court that certain orders of attachment were heretofore sued out and levied upon said property and that said attachments were sustained and that judgments were rendered against the said defendant, J. C. Belt, in said causes in which said orders of attachment were sued out and that the property in controversy was levied upon by said attach-

ments, and sold under the same, and the proceeds of said sale paid into this court, the court doth find that said proceeds of the sale of said property should be applied to the satisfaction of said judgments, and prorated among said attaching creditors, in the order of their priority, and it further appearing to the court that the orders of attachment in the following causes, to wit: 1279, A. Frankenthal & Bro.; 1280, Wear, Boogher Dry Goods Co.; 1281, Kingan & Co.; 1282, S. B. Sale & Co.; 1283, Armour Packing Co.; 1284, J. S. Merrell Drug Co.; 1285, J. M. Robinson & Co.; 1286, Hargandine, McKittrick D. G. Co.; 1287, Rothchilds Bros.; 1288, Ridenour, Baker Grocery Co.; 1289, Kelly-Goodfellow Shoe Co.; 1290, Silsby Stove & Queensware Co.; 1291, Meyer, Bannerman & Co.; 1292, F. Smith & Son; 1293, William Rowe; 1325, St. Louis Candy Co.; 1326, Huggins Cracker Co.; 1327, Loose Bros. Cracker Co.; 1328, St. Louis Wire Mill Co.; were issued by the clerk of this court, and received by the U. S. marshal for this court at the same time and were all levied upon said property by said marshal at the same time, and that they were the first to be so issued and levied, the court doth find that the plaintiffs in said causes are entitled to priority over all other attachment creditors, and that they are of equal priority as between themselves; and the court doth further find that said proceeds of sale of said property should be applied to the payment of the judgments
56 of said first attaching creditors, to wit: 1299, A. Frankenthal & Bro.; 1280, Wear, Boogher Dry Goods Co.; 1281, Kingan & Co.; 1282, S. B. Sale & Co.; 1283, Armour Packing Co.; 1284, J. S. Merrell Drug Co.; 1285, J. M. Robinson & Co.; 1286, Hargadine, McKittrick D. G. Co.; 1287, Rothchilds Bros.; 1288, Ridenour, Baker Grocery Co.; 1289, Kelly-Goodfellow Shoe Co.; 1290, Silsby Stove and Queensware Co.; 1291, Meyer, Bannerman & Co.; 1292, F. Smith & Son; 1293, William Rowe; 1325, St. Louis Candy Co.; 1326, Huggins Cracker Co.; 1327, Loose Bros. Cracker Co.; 1328, St. Louis Wire Mill Co.; and if the same is not sufficient to pay said judgments in full, that the same shall be prorated among them, and if there shall be more than sufficient to satisfy said judgments, then the remainder should be applied to the remaining attaching creditors in the order of their priority, to which findings of the court counsel for C. M. King, interpleader, except in open court, and it further appearing to the court that certain accounts owing to the said J. C. Belt were garnished by said attaching creditors and that the said C. M. King was heretofore directed to collect said garnished accounts, and also that the said C. M. King was also garnished, the court doth find that the said C. M. King should pay into this court all such sum or sums of money as he may have so collected from such garnishees, and also all such sum or sums of money that he may have in his possession or may have had in his possession as belonging to the said J. C. Belt, to which findings of the court counsel for the said C. M. King, interpleader, except in open court. It is therefore considered, ordered and adjudged by the court that the demurrer to the interplea of C. M. King, assignee of J. C. Belt be, and the same is hereby sustained, and the said interpleader, C,

M. King, failing and refusing to plead further, it is further considered, ordered and adjudged that the property in controversy is not the property of the said C. M. King and that he is not entitled to the same, and that the plaintiff herein do have and recover of and from the said interpleader, C. M. King, all his costs laid out and expended for and on account of said interplea, and that he have execution therefor. It is further considered, ordered and adjudged that the said C. M. King be and he is hereby ordered and directed to pay into this court within thirty days all such sum or sums of money as he may have collected on the garnished accounts in his hands, accompanying the same with a list of the names of the persons from whom he received said sums and the amounts paid by each, also that he pay into this court such sum or sums of money that he may have or may have had in his possession belonging to the said J. C. Belt; that all such sums so paid into this court, together with the proceeds of sale of said property already in this court, shall be applied to the satisfaction of the
57 judgment against the said J. C. Belt, in the following manner, to wit:

First. To the judgment and satisfaction of the judgments above mentioned, first attaching creditors, to wit: 1279, A. Frankenthal & Bro.; 1280, Wear, Boogher Dry Goods Co.; 1281, Kingan & Co.; 1282, S. B. Sale & Co.; 1283, Armour Packing Co.; 1284, J. S. Merrell Drug Co.; 1285, J. M. Robinson & Co.; 1286, Hargadine, McKittrick D. G. Co.; 1287, Rothchilds Bros.; 1288, Ridenour, Baker Grocery Co.; 1289, Kelly-Goodfellow Shoe Co.; 1290, Silsby Stove & Queensware Co.; 1291, Meyer, Bannerman & Co.; 1292, F. Smith & Son; 1293, William Rowe; 1325, St. Louis Candy Co.; 1326, Huggins Cracker Co.; 1327, Loose Bros. Cracker Co.; 1328, St. Louis Wire Mill Co.; if the same is sufficient to pay the same in full, and if not, then said amounts shall be prorated among said first attaching creditors, but if said sum is more than sufficient to satisfy said judgments the balance so remaining shall be applied to the other attaching creditors, in the order of their priority, to which action of the court in sustaining the demurrer to the interplea of C. M. King, assignee of J. C. Belt, and rendering the foregoing judgment against said C M. King his counsel except in open court.

It is further considered, ordered and adjudged by the court that the appeal bond in this case be and the same is hereby fixed at the sum of fifteen thousand dollars, and the said interpleader is hereby given and allowed sixty days in which to file his bill of exceptions and supersedeas bond in this cause, and upon his failure to file said bond on or before the expiration of said sixty days, said bond to be with good and sufficient securities, then the said clerk of this court is hereby ordered and directed to pay to the attorneys of record for the above-named attaching creditors the proceeds in his hands in this cause, in the manner and in accordance with the above directions, together with their costs in their behalf expended.

And there is now no fund or proceeds in court which the interpleader can recover in this action or to or in which the interpleader had any right."

The COURT: The court allows this amendment to be made.

Mr. HODGES: The interpleader excepts to the ruling of the court in admitting this amendment, first, because the amendment comes too late; second, because the plaintiffs could not set up any matter of defense except questions arising from the pleadings and
58 the value of the property levied on because of the agreed stipulation filed in this court on the 15th day of December, 1893, as follows:

In the United States Court in the Indian Territory, First Judicial Division.

J. M. ROBINSON & Co., Plaintiffs,
vs.
JOHN C. BELT, Defendant; CHARLES M. KING, Interpleader. } No. 1285.

Agreement and Stipulation.

It is hereby agreed and stipulated by and between the plaintiffs in this cause, and all other causes in which creditors of the said John C. Belt have levied upon and sold certain property alleged to be the property of the said John C. Belt, under orders of this court and which is claimed by the intervener, C. M. King, under a deed of assignment made and delivered to the said C. M. King as assignee in trust for the use and benefit of the creditors of said John C. Belt, said deed being dated December 29, 1891, and signed and executed by the said John C. Belt, that the said attaching creditors will file no answer nor interpose no defense to the claim of the intervener, excepting as to matters of law arising upon the pleadings, and no issues of fact as to the value of the property in suit, for the conversion and value of which intervener seeks to recover in this suit and other suits as per agreement on file in this cause by and between all the parties interested herein, and that this agreement be made a part of the record in this and all other causes similarly situated as per agreement herein heretofore filed. Signed this December 15, 1893.

W. T. HUTCHINGS,
Attorney for plaintiffs and other attaching creditors, as follows, to wit:

1279 A. Frankenthal & Bro.
1280 Wear Boogher Dry Goods Co.,
1285 J. M. Robinson & Co.,
1286 Hargadine, McKittrick D. G. Co.,
1287 Rothchilds Bros.,
1288 Ridenout Baker Grocery Co.,
1289 Kelly, Goodfellow Shoe Co.,
1290 Silsby Stove and Queensware (—),
1291 Meyer, Bannerman & Co.,
1292 F. Smith & Son,
1299 John Farrell,

1302 M. Wolf & Sons,
59 1329 St. Louis Wire Mill Co.,
1387 Armstrong, Shofrosto & Boyd.

J. C. HODGES,
A. J. NICHOLS,
J. B. FORRESTER,
Attorneys for Intervener, C. M. King.

CLIFFORD L. JACKSON,
Attorney for the following plaintiffs in following-numbered cases:
1281 Kingan & Co.,
1282 S. B. Sale & Co.,
1283 Armour Packing Co.,
1284 Merrell Drug Co.,
1293 William Rowe,
1325 St. Louis Candy Co.,
1326 Huggins Cracker Co.,
1327 Loose Bros. Cracker Co.,

DENISON & MAXEY,
Attorneys for the following plaintiffs in following-numbered cases:
1295 Goodbar Shoe Co.,
1296 Barr, Seasongood & Co.,
1297 The Waples Platter Co.,
1298 C. B. Cones & Son Mfg. Co.,
1301 Salina Roller Mill & El. Co."

Interpleader also demurs to the pleading as allowed by the court because said plea sets up no defense to interpleader's cause of action and constitutes no defense to his right to recover; second, because plaintiffs seek by said plea to take advantage of their own wrong in that they procured the appropriation of the fund in court for the payment of their debt without authority of law.

The COURT: When the attorneys for Messrs. J. M. Robinson & Co., offered to prove at a former stage of proceedings here the fact which is now set up in their amended answer the court ruled that such proof was not admissible. I gave no reason at the time but the basis for that ruling was not, as I stated then, that it came too late but that it was not material. There was nothing set forth in the pleadings that any issue had been raised on the subject. Now it comes in another shape in the offer of counsel to amend the answer and set forth this fact, which is a conceded one in the case that the fund has been distributed, as a defense to the interplea of C. M. King in this case. The court allowed this amendment
60 to be made for the reason that it may be a material fact in the issue and that this case will probably go to the circuit court of appeals and perhaps to the Supreme Court of the United States no matter how it may be decided now. Therefore, in order to present the whole issues that may be presented in this case, the court has allowed this amendment to be made subject to the exceptions of counsel as to whether it does or does not present a legal defense to the plea. As this — a legal question to be decided by the court the

question may be decided now, that this amendment to the answer does not set forth, in the opinion of the court, a legal defense to the interplea of King in this case; that the rights of King as an interpleader at this time relate to the time of his filing his interplea, and that he himself, having done nothing between that time and this to forfeit his right to that claim, he stands there now as he stood upon the day of filing his interplea and is entitled to all the rights he had then to this property or to the proceeds thereof; and that nothing but the decision of the courts in the final adjudication of this case can determine what his rights are, but when they are decided that it will be decided as of that day and not of today. Therefore, the court holds that the amended answer in this particular does not present a legal defense to the interplea in this case.

To which ruling of the court plaintiffs by their counsel then and there excepted.

Mr. JACKSON: We offer to prove by the records in the clerk's office that the fund of money realized and brought into court as the proceeds of the property of J. C. Belt attached in the cases in which the plaintiffs are parties to the agreement in this case were in accordance with the judgment of the court entered of the 16th day of December, 1893, were paid out during the month of March, 1894, *pro rata* to the parties entitled to it according to the terms of that judgment.

Mr. FORRESTER: We object because it is incompetent and irrelevant because not pertinent to any issue before the court.

The COURT: The court sustains the objection.

Mr. JACKSON: We except to the ruling of the court and we note an exception also to the action of the court in ruling upon the defense set up to the amended answer.

And this was all of the testimony in the case offered by either party.

Whereupon the court after hearing the argument overrules the motion of the plaintiffs to direct a verdict in their favor, to which ruling of the court the plaintiffs by their counsel then and there excepted and prayed the court to instruct the jury as follows, to wit:

61 "First. The court instructs the jury that if they believe that at the date of the issuance of the attachment in this case the property or any part thereof situated in the Indian Territory at the time of the making of the deed of assignment and claimed by Belt as exempt in 'Schedule C' was the property of John C. Belt you will find your verdict in favor of the plaintiff, J. M. Robinson & Co."

But the court refused to instruct the jury as requested by the plaintiffs; to which ruling of the court the plaintiffs then and there excepted in the presence of the jury and before the jury had retired from the bar of the court, and the plaintiffs prayed the court to instruct the jury as follows, to wit:

"Second. The court instructs the jury that there is no evidence in this case to sustain the claim of the interpleader and you will find your verdict in favor of the plaintiff, J. M. Robinson & Co."

But the court refused to instruct the jury as requested by the plain-

tiffs; to which ruling of the court the plaintiffs by their counsel then and there excepted, and the plaintiffs prayed the court to instruct the jury as follows, to wit:

"Fourth. The court instructs the jury that the gift of the buggy and harness by Belt to his wife not on consideration deemed good in law is void and conveyed no title and was subject to attachment by the creditors of J. C. Belt at the time of the issuance of the attachment in this case."

But the court refused to instruct the jury as requested by the plaintiffs. To which ruling of the court the plaintiffs then and there in the presence of the jury and before the jury had retired from the bar of the court, excepted.

Whereupon, the court of its own motion instructed the jury as follows, to wit:

"First. That the interplea filed in this case by C. M. King states a good cause of action for the recovery of the attached property or its proceeds; and if the jury believe from the evidence that the averments in said interplea are substantially true they will find for the interpleader C. M. King. But if they believe from the evidence that said averments are not substantially true they will find for the plaintiffs, J. M. Robinson & Co.

Second. That the reservation to the assignor in his deed of assignment in this case as exempt, of property which he did not own or control, by mistake of the assignor, does not make the assignment void, if in fact he conveys, regardless of such reservation, all
62 the property of the assignor not exempt from execution sale; and the assignee, who is the interpleader in this case, may prove by oral evidence that any property mentioned in the deed of assignment was not the property of the assignor, but was inserted in the deed by mistake.

Third. That the only substantial question presented in this case at this time is whether certain household furniture situated in Eufaula, and a pair of mares, a buggy and a harness which were set forth in Schedule 'C,' which is a part of said deed of assignment, were at the time of executing said deed the property of the assignor J. C. Belt, or were the property of his wife, and were inserted in said deed by mistake; and if the jury believe from the evidence that said property was at the time of executing said deed the property of the wife of J. C. Belt, and was inserted in said deed by mistake they will find for the interpleader C. M. King.

Fourth. That the claim by the assignor J. C. Belt, in his deed of assignment as exempt from execution sale of certain items of personal property of inconsiderable value, such as wearing apparel valued at $40, a gold watch valued at $25, two lamps valued at $1.50, a chair valued at $3, and a trunk valued at $5, when in fact such articles, by reason of their location in the Indian Territory, were not exempt from execution sale, such claim, if not made for the purpose of defrauding creditors, will not render the assignment void."

Whereupon, the plaintiffs by their counsel excepted to that part of the foregoing charge of the court numbered first, which is in the following language, to wit:

"First. That the interplea filed in this case by C. M. King, states a good cause of action for the recovery of the attached property or its proceeds; and if the jury believe from the evidence that the averments in said interplea are substantially true they will find for the interpleader, C. M. King. But if they believe from the evidence that said averments are not substantially true they will find for the plaintiffs, J. M. Robinson & Co." And this exception was taken in open court and before the jury had retired from the bar of the court.

The plaintiffs by their counsel excepted to that part of the charge as given by the court numbered second, which is in the following language, to wit:

"Second. That the reservation to the assignor in his deed of assignment in this case as exempt, of property which he did not own or control, by mistake of the assignor, does not make the assignment
63 void, if in fact he conveys, regardless of such reservation, all the property of the assignor not exempt from execution sale, and the assignee, who is the interpleader in this case, may prove by oral evidence that any portion of the property mentioned in the deed of assignment was not the property of the assignor, but was inserted in the deed by mistake." And this exception was taken in open court and before the jury had retired from the bar of the court.

The plaintiffs by their attorneys excepted to that part of the charge as given by the court numbered third, which is in the following language, to wit:

"Third. That the only substantial question presented in this case at this time is whether certain household furniture situated in Eufaula, and a pair of mares, a buggy and harness which were set forth in 'Schedule C,' which is a part of the said deed of assignment, were at the time of executing said deed the property of the assignor J. C. Belt, or were the property of his wife, and were inserted in said deed by mistake; and if the jury believe from the evidence that said property was at the time of executing said deed the property of the wife of J. C. Belt and was inserted in said deed by mistake they will find for the interpleader C. M. King." And this exception was taken in open court and before the jury had retired from the bar of the court.

The plaintiffs excepted to that part of the charge as given by the court numbered fourth, which is in the following language, to wit:

"Fourth. That the claim by the assignor J. C. Belt, in his deed of assignment as exempt from execution sale of certain items of personal property of inconsiderable value, such as wearing apparel valued at $40, a gold watch valued at $25, two lamps valued at $1.50; a chair valued at $3; and a trunk valued at $5; when in fact such articles, by reason of their location in the Indian Territory, were not exempt from execution sale, such claim, if not made for the purpose of defrauding creditors, will not render the assignment void." And this exception was taken in open court before the jury had retired from the bar of the court.

And after the court had delivered its charge and plaintiffs had saved their exceptions thereto as above set forth, the case was submitted to the jury and the jury retired in charge of a sworn officer

and after considering of their verdict returned into court with the following verdict, to wit:

64 J. M. ROBINSON & Co., Pl'ffs,
vs.
JOHN C. BELT, Def'nd't; C. M. KING, Interpleader.

We, the jury, find the issues in this cause in favor of the interpleader, C. M. King, and that the proceeds arising from the sale of the attached property was seventy-nine hundred ($7,900) dollars.

(Signed) T. F. MEAGHER, *Foreman.*

Whereupon the plaintiffs then and there gave notice to the court that they would file a motion for a new trial in this case; and thereafter, to wit: on the 25th day of September, 1895, and within the time allowed by the law for the filing of motions for a new trial, the said plaintiffs filed their motion for a new trial, which is in words and figures as follows, to wit:

"In the United States Court in the Indian Territory, Northern District, at Muscogee.

J. M. ROBINSON & Co., Plaintiffs,
vs.
J. C. BELT, Defendant; C. M. KING, Interpleader. } Motion for New Trial.

Now on this day come the above-named plaintiffs by their attorneys, and move the court to grant a new trial in this cause, which said motion is made in general terms and does not recite specifically the exceptions and objections of the plaintiffs relied upon to secure a new trial in this cause by special rule of the court made in this cause and the agreement of the parties to the cause, for the following reasons:

First. That the verdict of the jury is not sustained by sufficient evidence.

Second. That the verdict of the jury in this cause is contrary to law.

Third. That the court erred in admission of improper testimony offered by the interpleader King, and objected to by plaintiffs.

Fourth. The court erred in the refusal to admit legal testimony offered by the plaintiffs.

Fifth. The court erred in its charge to the jury.

Sixth. The court erred in refusing instructions to the jury offered by the plaintiffs.

(Signed) W. T. HUTCHINGS,
N. B. MAXEY,
C. L. JACKSON,
Attorneys for Plaintiffs."

65 But the court denied the motion for a new trial as asked by the plaintiffs and gave judgment on the verdict as rendered against the plaintiffs; to which ruling of the court in deny-

ing said motion for a new trial and entering said judgment, th plaintiffs by their counsel then and there excepted.

And inasmuch as the matters above set forth do not fully appea of record, the plaintiffs, by their attorneys, tender this, their bill o exceptions, within the time allowed by the court and extended b the stipulation hereto attached, and pray that the same may b signed and sealed and made a part of the record in this case, whic is accordingly done this 11th day of November, 1895.

WM. M. SPRINGER,
Judge of the United States Court in the Northern District, Indian Territory.

Indorsed: "No. 1285. J. M. Robinson & Co. *vs.* John C. Belt deft; C. M. King, interpleader. Bill of exceptions. Filed Nov 11, 1895. Jas. A. Winston, clerk."

UNITED STATES OF AMERICA, *Indian Territory, Northern District,* } *ss:*

I, James A. Winston, clerk of the United States court for th northern district of the Indian Territory, do hereby certify that th above and foregoing transcript is a full, true and complete transcrip of the record and proceedings and all things, as far as called for concerning the cause numbered 1285, and entitled J. M. Robinson & Co., plaintiffs, against John C. Belt, defendant, and C. M. King, in terpleader, as the same appears of record in my office at Muscogee Indian Territory.

Witness my hand and the seal of said court at Muscogee, India Territory, the 29th day of November, A. D. 1895.

[SEAL.] (Signed) JAMES A. WINSTON,
Clerk of the United States Court, Northern District, Indian Territory.

Indorsed: "No. 18. Filed Dec. 10th, 1895. Fielding Lewis clerk."

And afterwards, to wit: on the 11th day of January, 1896, it bein the fifth day of the regular May term, 1896, of the United State court of appeals in the Indian Territory, the following proceeding were had and made of record in said cause, to wit:

66 J. M. ROBINSON AND CO., Appellants,
vs.
J. C. BELT and C. M. KING, Appellees.

Submitted on brief and oral argument of appellant-, and oral a gument of appellee-.

And afterwards, to wit, on the 13th day of January, 1898, it bein the ninth day of the regular January term, 1898, of said court, th following further proceedings were had and made of record in sai case, to wit:

J. M. ROBINSON & Co., Appellants,
vs.
J. C. BELT and C. M. KING, Appellees.

Now on this day this cause is resubmitted to the court, and the parties hereto are allowed thirty days in which to file additional authorities.

And afterwards, to wit: on the 8th day of June, 1899, it being the third day of the regular June term, 1899, of said court, the said court handed down its opinion in said case, which is in the words and figures following, to wit:

In the Court of Appeals for the Indian Territory.

J. M. ROBINSON AND COMPANY, Appellants,
vs.
J. C. BELT and C. M. KING, Appellees. } No. 18.

Action by C. M. King, as interpleader, to recover value of property, attached and sold by appellants, which had been conveyed to King, as assignee, by deed of assignment, made by his codefendant, John C. Belt.

Appeal from the United States court for the northern district of the Indian Territory, before Hon. Wm. M. Springer, judge, September 19, 1895.

John C. Belt, a resident of Arkansas, and a licensed trader at Eufaula, I. T., on the 29th of December, 1891, made an assignment for the benefit of his creditors to C. M. King, as his assignee. On the following day, the appellants brought suit against Belt and sued out an attachment and levied upon the property assigned. Belt failed to plead and judgment by default was taken against him and attachment was sustained. On May 31, 1892, King filed his amended interplea, setting out deed of assignment, and claimed the property levied upon as his, by virtue of said deed. King filed his bond as assignee and inventory of the property with the clerk of the court.

67 The property attached was sold by order of court, and proceeds paid into court, before the interplea was filed. At the May term, 1892, a demurrer to the interplea was filed and sustained by the court, from which order King sued out a writ of error to the U. S. court of appeals. King gave no supersedeas bond and the fund was by order of court distributed *pro rata* to the attaching creditors, according to their priorities. The fund had been deposited in a bank, designated as a U. S. depository. The bank failed and only eighty-seven per cent. of the fund was recovered and distributed. The fund amounted to $7,900.00. The court of appeals reversed the judgment on the demurrer and on Sept. 19, 1895, the appellants filed their answer to the interplea, denying that King was owner by virtue of the deed of assignment and alleging that the deed of assignment was fraudulent and void; denies that King filed a complete inventory; denies that certain personal property de-

scribed in the deed of assignment was the property of the wife of Jno. C. Belt, and admitted that the property described in the deed was levied upon by the U. S. marshal under the attachment. On December 15, 1893, an agreement and stipulation was made and entered into, which among other provisions contained the following:

"That the said attaching creditors will file no answer nor interpose no (*any*) defense to the claim of the intervener; excepting as to matters of law arising upon the pleadings, and no issues of fact as to the value of the property in suit, for the conversion and value of which intervener seeks to recover in this suit, and other suits, as per agreement on file in this cause by and between all the parties interested herein, and that this agreement be made a part of the record in this and all other causes similarly situated as per agreement herein heretofore filed."

Several suits had been instituted and attachments issued and levied and an agreement had been entered into on May 12, 1892, that they should all abide the results of this case. Said agreement contains the following stipulations, after giving the style of the different suits, viz:

"* * * And in all of which it is proposed to file an interplea on the part of C. M. King as assignee of John C. Belt; that the pleadings filed in said cause No. 1285 and those filed with reference to any interplea growing out of said suit, shall be adopted and considered as filed in all of the other above-mentioned cases and that similar orders shall be considered as entered in all of said above-mentioned causes; and a judgment similar to the judgment entered in said cause No. 1285 or upon any interplea growing out of said cause shall be entered in all the other of said above mentioned
68 and numbered causes; and that in the event of any writ of error or appeal being sued out or taken for a review of any judgment entered in said cause No. 1285 or the interplea growing out thereof, that such writ of error or appeal shall be considered as applying to all judgments entered in the other of the above numbered and mentioned causes and the judgments in all of such causes shall be held subject to the order or judgment that may be rendered by any appellate tribunal upon any such writ of error or appeal in said cause first above mentioned."

This agreement is in part the agreement mentioned in the above quotation from the agreement made Dec. 15, 1893.

The case was tried upon the issues made by the pleadings and during the trial and before the same was submitted to the jury, on to wit, Sept. 23, 1895, the plaintiffs below and appellants here asked to amend their answer, setting up the fact that the fund had been distributed by the former order of the court to the various attaching creditors.

"And there is now no fund or proceeds in court which the interpleader can recover in this action or to or in which the interpleader had any right."

Defendants excepted to the allowance of said amendment by the court, for the reason that it would be in violation of the stipulation of December 15, 1893, and demurred also to the said amended an-

swer, "because said plea sets up no defense to interpleader's cause of action, and constitutes no defense to his right to recover."

The court sustained the demurrer in the following opinion, to which plaintiffs excepted:

"As this is a legal question to be decided by the court the question may be decided now, that this amendment to the answer does not set forth, in the opinion of the court, a legal defense to the interplea of King in this case; that the rights of King as an interpleader at this time, relate to the time of his filing his interplea, and that he himself, having done nothing between that time and this to forfeit his right to that claim, he stands there now as he stood upon the day of filing his interplea and is entitled to all the rights he had then to this property or to the proceeds thereof; and that nothing but the decision of the courts in the final adjudication of this case can determine what his rights are, but when they are decided that it will be decided as of that day and not of today. Therefore the court holds that the amended answer in this particular does not present a legal defense to the interplea in this case."

69 The case was thereupon submitted to the jury under the charge of the court, which was as follows, to wit:

"First. That the interplea filed in this case by C. M. King states a good cause of action for the recovery of the attached property or its proceeds; and if the jury believe from the evidence that the averments in said interplea are substantially true, they will find for the interpleader, C. M. King. But if they believe from the evidence that said averments are not substantially true, they will find for the plaintiffs, J. M. Robinson & Co.

"Second. That the reservation to the assignor in his deed of assignment in this case as exempt, of property which he did not own or control, by mistake of the assignor, does not make the assignment void, if in fact he conveys, regardless of such reservation, all the property of the assignor not exempt from execution sale; and the assignee, who is the interpleader in this case, may prove by oral evidence that any portion of the property mentioned in the deed of assignment was not the property of the assignor, but was inserted in the deed by mistake.

"Third. That the only substantial question presented in this case at this time is whether certain household furniture situated in Eufaula, and a pair of mares, a buggy and a harness which were set forth in Schedule 'C,' which is a part of the said deed of assignment, were at the time of executing said deed the property of the assignor, J. C. Belt, or were the property of his wife, and were inserted in said deed by mistake; and if the jury believe from the evidence that said property was at the time of executing said deed the property of the wife of J. C. Belt and was inserted in said deed by mistake they will find for the interpleader C. M. King.

"Fourth. That the claim by the assignor J. C. Belt in his deed of assignment as exempt from execution sale of certain items of personal property of inconsiderable value, such as wearing apparel valued at $40, a gold watch valued at $25, two lamps valued at $1.50, a chair valued at $3 and a trunk valued at $5, when in fact

such articles, by reason of their location in the Indian Territory, were not exempt from execution sale, such claim, if not made for the purpose of defrauding creditors, will not render the assignment void."

The jury found the issues for the interpleader, C. M. King, and that the proceeds of the sale of the attached property was $7,900.00.

70 The plaintiffs moved for a new trial, which motion was overruled by the court, judgment was entered upon the verdict and plaintiffs appealed to this court.

Wm. H. H. Clayton, James Brizzolari, James B. Forrester, J. C. Hodges, A. J. Nichols, J. H. Koogler, attorneys for appellees.

N. B. Maxey, C. L. Jackson, Wm. T. Hutchings, attorneys for appellants.

TOWNSEND, *J.:*

The appellants in their brief have stated four objections to the deed of assignment in this case, as showing upon its face that it is fraudulent in law: "For the reason that it fails to convey all the debtor's property, and at the same time makes several classes of preferred creditors, who in each instance are compelled to give a full release of their indebtedness as a condition of sharing the benefits of such preferences." Second, "If the property, or any part of it, described in Schedule 'C,' does not pass under the terms of the deed to the assignee, and Belt cannot claim it under the homestead or exemption laws, the deed is void." Third, "Belt chose to make his assignment in the Indian Territory, and the execution, interpretation and validity of it must be determined by its laws." Fourth, "Belt decided for himself that he was entitled to the benefits of the exemption laws of both Arkansas and the Indian Territory. He did not leave it as he might appropriately have done to the law to determine for him what property he was entitled to exempt, if any, nor in what jurisdiction he might assert the right. It was his plain intention to reserve to himself all the property set forth in Schedule 'C' and not to convey the title to it to his assignee, and he could not have used plainer or more appropriate language to effect this purpose. He might have made any disposition of property thus excepted, no matter how much or how valuable, and his assignee could never have claimed any right or title to the same, or recovered it under the deed for the creditors, for no such rights passed to him by the deed."

The law regulating "Assignment for the benefit of creditors" in force in the Indian Territory at the date of the execution of the deed of assignment in this case is chapter VIII of Mansfield's Digest of the Statutes of Arkansas, which was adopted and extended over the Indian Territory by the act of Congress approved May 2, 1890, and in construing that statute, the circuit court of appeals of the eighth circuit has said:

71 "When called upon to construe the sections of the statutes thus adopted, we deem it our duty to follow the construction given thereto by the supreme court of Arkansas. The adoption of

this course as the settled rule to be followed by this court, and the court of original jurisdiction in the Indian Territory, must commend itself to all interested."

Appolos *et al. v.* Brady *et al.*, 49 Fed. 401.

Applying the rule of construction thus laid down to the objections of appellants, it becomes necessary to examine the decisions of the supreme court of Arkansas. It will first be observed that the deed of assignment in this case, after describing specifically the property conveyed to the assignee, contains the following:

"And I, the said John C. Belt, hereby intending to convey unto the said C. M. King for the purpose and trust as aforesaid, all of my effects of every kind and description, wherever situated, both real, personal and mixed, all notes, book accounts, and choses in action, whether described in this deed or not, save and except only such real and personal property as is exempt under the law from forced sale, a schedule of the property so claimed by the said John C. Belt, to be exempt from force- sale, is hereto attached, marked Schedule 'C' and made a part hereof."

In Baker *v.* Baer, 59 Ark. p. 503, a deed of assignment conveyed all the lands and other property of the assignor, "except what are exempt to him by the laws of the State," the exemptions being fully described in a schedule attached. The lands claimed as exempt had never been impressed as a homestead. The court held that since exempt property was only reserved, the title passed to assignee. The court observe-:

"The law, upon the evidence of the assignor, determines that the lands claimed as a homestead were never so impressed, and therefore are not exempt. Hence the title passed absolutely to the assignee. The language of the granting clause is unambiguous and should be held to mean what it says. Only property 'exempt' was reserved. This property was not reserved. This is not a case of conveying all in the deed and at the same time secretly or intentionally withholding a portion for the debtor's benefit. All was conveyed by the definite description, and this so far as the deed itself, and the claim of exemptions thereto attached, is concerned, argues most strongly the good faith and honesty of the transaction;" but if the grantor knew that the lands were not exempt it was pointed out to his creditors, and is reason for saying there was no
72 fraudulent withholding. "A reservation of the kind mentioned would not invalidate the assignment." An instruction to the effect that such a reservation would render the assignment fraudulent and void was erroneous.

This is directly applicable to this case. In King *v.* Hargadine-McK. Dry Goods Co., 60 Ark. p. 1, heard on demurrer, the identical deed of assignment in this case was passed upon by the supreme court of Arkansas and after quoting the clause in the deed hereinbefore set out, the court said:

"Is the deed void upon its face? is the question in the case. Such deeds of assignment have been upheld by the decisions of this court holding that the debtor, in making assignment of his property for

the benefit of creditors, may exact releases from creditors, as a condition of preference under the deed, where he dedicates 'all of his property, not exempt by law, to the payment of all his creditors, not necessarily to the payment of all in equal proportions.' McReynolds *v.* Dedman, 47 Ark. p. 351."

The court say further: "As to the claim of exemption in the deed, there is no difference in principle between the deed of assignment in this case and the deed in the case of Baker *v.* Baer, 59 Ark. p. 503, which was held not objectionable, the ruling in which case as to this question is approved and adopted in this." The court further say that the act of Congress of May 2, 1890, putting in force chapter VIII of Mansfield's Digest, title "Assignments for the benefit of creditors," and chapter 60 of said Digest, title "Executions," that "the assignor had the right to claim his exemptions as under the laws of the State of Arkansas."

It is declared to be the established law of Arkansas, in accord with much authority elsewhere, "that a stipulation for a release in a general assignment, which is made only as a condition of preference, does not invalidate the instrument."

Wolf *v.* Gray, 53 Ark., p. 79.

It was said by the circuit court of appeals, when the demurrer in this case was disposed of by that court, that "an assignment that conveys all the debtor's property is not a partial assignment; and one that conveys all his property, and then by mistake reserves or exempts from the conveyance the property of another, that the assignor could not in any way convey, none the less conveys his entire property, and cannot be obnoxious to the objection that it is a partial assignment * * * and the assignee may plead and prove the ownership of the property described in the assignment to establish this fact, and to maintain his right to the property as-
73 signed. * * * In our opinion the interplea stated a good cause of action for the recovery of the attached property, and the demurrer should have been overruled."

Belt *et al. v.* Robinson, 63 Fed., 92.

The court below followed this decision in its first, second and third instructions to the jury and the jury by its verdict found for the appellees. The fourth instruction is the law, as declared by the supreme court of Arkansas in Lowenstein *v.* Finney, 54 Ark. 128.

The statement at close of appellant's brief that they should have been permitted to show that only eighty-seven per cent. of the fund was distributed, as we view it, was simply an effort to violate the agreement and stipulation of record, made on the 15th of December, 1893, and the court below was correct in holding that whatever rights the appellee King has as assignee were fixed by the conditions existing at the date of his filing his intervention. The counsel have been diligent in citing authorities, but the rule of construction stated in Appollos *et al. v.* Brady *et al.*, *supra*, together with the ruling by the Arkansas supreme court in the hearing, involving this same assignment, in King *v.* Hargadine-McK. Dry Goods Co.,

supra, in disposing of the demurrer in this case, of the eighth circuit, in disposing of the demurrer in this case, Belt *v.* Robinson & Co., *supra*, has left but little for this court to do, except to cite the Arkansas decisions, construing deeds of assignment in the various cases that have received the consideration of that court.

We think the assignment in this case was good, and the judgment of the court below was correct, and it is therefore affirmed.

Concurred in by John R. Thomas, justice.

Upon which said opinion the said court on said 8th day of June, 1899, rendered and entered of record the following judgment, to wit:

J. M. ROBINSON & Co., Appellants,
vs.
JOHN C. BELT, Defendant; C. M. KING, Interpleader, Appellees.

Appeal from the United States court, northern district, Indian Territory.

This cause came on to be heard upon the transcript of the record of the United States court for the northern district of
74 the Indian Territory, and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said court for the northern district in this cause.

It is therefore considered by the court that the judgment of said court for the northern district in this cause rendered, be and the same is hereby in all things affirmed with costs.

It is further considered that said appellants (—) all their costs in this court in this cause (expanded) and have execution thereof.

And afterwards, to wit, on the 10th day of July, 1899, the said appellants filed in the office of said clerk their petition for a writ of error in said cause, which is in the words and figures following, to wit:

In the United States Court of Appeals in the Indian Territory.

J. M. ROBINSON & Co., Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING, Interpleader, Defendants in Error.

To the honorable chief justice and associate justices of the United States court of appeals in the Indian Territory:

Your petitioners, plaintiffs in error in the above-entitled cause respectfully show that said cause is now pending in the United States court of appeals in the Indian Territory, and a judgment has been rendered therein affirming the judgment of the United States court for the northern district of the Indian Territory for $7,900.00.

Wherefore your petitioners respectfully pray that a writ of error be allowed them in this cause, directing the clerk of the United States court of appeals in the Indian Territory to send the record

and proceedings in said cause with all things concerning the same, to the United States court of appeals for the eighth circuit in order that the errors complained of in the assignment of errors herewith filed may be reviewed, and if errors be found corrected according to the laws and customs of the United States.

J. M. ROBINSON & CO.,
Plaintiff in Error,
By WILLIAM T. HUTCHINGS.

Allowed by—
JOHN R. THOMAS.
Judge U. S. Courts and Associate Justice of the U. S. Court of Appeals, I. T.

Indorsed: "No. 18. J. M. Robinson & Co. *vs.* John C. Belt & C. M. King, interpleader. Petition for writ of error. Filed July 10th, 1899. Wm. P. Freeman, clerk."

75 And afterwards, to wit: on the said 10th day of July, 1899, the said appellants filed their assignment of errors in said cause, which is in the words and figures following, to wit:

In the United States Court of Appeals in the Indian Territory.

J. M. ROBINSON & CO., Plaintiff,
vs.
JOHN C. BELT, Defendant; C. M. KING, Interpleader.

Now comes J. M. Robinson & Co., by their attorney, and say that in the foregoing record and proceedings there is manifest error in the action and ruling of the United States court for the northern district of the Indian Territory as well as the actions, rulings and opinions of the United States court of appeals in the Indian Territory in this, to wit:

Said United States court for the northern district in the Indian Territory erred:

First. In overruling the motion of the plaintiff for a new trial.

Second. In admitting in evidence the deed of assignment from John C. Belt to C. M. King.

Third. In admitting the following question: "I will get you to state if at any time after the deed of assignment there was anything said about this property being your wife's," and the answer thereto, and other questions on the same line, which are as follows:

A. There was.

Q. Was that while the inventory was being made or when?

A. That was after the deed had been made.

Q. Was the inventory complete or were you then working on the inventory?

A. I think they were working on the inventory at that time. The deed had been executed before that.

Q. State how this property just now claimed by your wife happened to be put in this deed?

A. Mr. Nichols asked me.

Q. Who is he?
A. He is the attorney who drew up the deed.

Continued direct examination.

By Mr. BRIZZOLARA:

Q. He was at Eufaula was he?
A. Yes, sir. He asked me to tell him all the property we had. Of course I gave this in. I don't know whether he meant all the property I had. I asked him if he meant everything we had and he said, "Yes, everything you have."
76 Q. And afterwards making the inventory the question came up with (—) to this that belonged to your wife?
A. Yes, sir?
Q. If the attorney was present then what did he say?
A. He said it didn't make any difference anyway, I was liable to my exemption.
Q. You say the way it went in was by telling you to give a list of all you had.
A. Of all we had.
Q. Did you say anything to Mr. King at this time about this being your wife's property?
A. I think it was there. It was Mr. Nichols I spoke to. I think Mr. King was present.

Fourth. In refusing to permit the plaintiff to offer in evidence the records of the court and other competent evidence to show that the proceeds of sale of the attached property had been distributed by order of the court, and that the attaching creditors have received 87 per cent. of said proceeds of the sale owing to the failure of the bank in which said funds had been deposited by direction of the Department of Justice of the United States.

Fifth. In giving the following instruction:

"That the interplea filed in this case by C. M. King states a good cause of action for the recovery of the attached property or its proceeds; and if the jury believe from the evidence that the averments in said interplea are substantially true they will find for the interpleader, C. M. King. But if they believe from the evidence that said averments are not substantially true they will find for the plaintiffs, J. M. Robinson & Co."

Sixth. In giving the following instructions:

"That the reservation to the assignor in his deed of assignment in this case (*is*) exempt, of property which he did not own or control, by mistake of the assignor, does not make the assignment void, if in fact he conveys, regardless of such reservation, all the property of the assignor not exempt from execution sale; and the assignee, who is the interpleader in this case, may prove by oral evidence that any portion of the property mentioned in the deed of assignmant was not the property of the assignor, but was inserted in the deed by mistake."

Seventh. In giving the following instructions:

"That the only substantial question presented in this case at this

time is whether certain household furniture situated in Eufaula and a pair of mares, a buggy and harness which were set forth in Schedule 'C,' which is a part of said deed of assignment, were at the time of executing said deed the property of the assignor, J. C.
77 Belt, or were the property of his wife, and were inserted in said deed by mistake; and if the jury believe from the evidence that said property was at the time of executing said deed the property of the wife of J. C. Belt, and was inserted in said deed by mistake they will find for the interpleader, C. M. King."

Eighth. In giving the following instruction:

"That the claim by the assignor, J. C. Belt, in his deed of assignment as exempt from execution sale of certain items of personal property of inconsiderable value, such as wearing apparel valued at $40, a gold watch valued at $25, two lamps valued at $1.50, a chair valued at $3, and a trunk valued at $5, when in fact such articles, by reason of their location in the Indian Territory, were not exempt from execution sale, such claim, if not made for the purpose of defrauding creditors, will not render the assignment void."

Ninth. In refusing to give the following instruction requested by plaintiff:

"The court instructs the jury that if they believe that at the date of the issuance of the attachment in this case the property or any part thereof situated in the Indian Territory at the time of the making of the deed of assignment and claimed by Belt as exempt in 'Schedule C' was the property of John C. Belt you will find your verdict in favor of the plaintiff, J. M. Robinson & Co."

Tenth. In refusing to instruct the jury as follows:

"The court instructs the jury that there is no evidence in this case to sustain the claim of the interpleader and you will find your verdict in favor of the plaintiff, J. M. Robinson & Co."

Eleventh. In refusing to instruct the jury as follows as requested by the plaintiffs:

"The court instructs the jury that the gift of the buggy and harness by Belt to his wife not on consideration deemed good in law is void and conveyed no title and was subject to attachment by the creditors of J. C. Belt at the time of the issuance of the attachment in this case."

Twelfth. In refusing after all the testimony was in to instruct the jury to return a verdict for the plaintiff.

And the said United States court of appeals in the Indian Territory erred in not reversing the judgment of the said United States court for the northern district of the Indian Territory, because of each several errors of the latter as to its actions and rulings as to each and every one of the errors above specified.

78 Wherefore and for divers other errors apparent on the face of said record J. M. Robinson & Co. pray that said proceedings as well as the judgment of both the United States court for the northern district of the Indian Territory, and the United States court of appeals in the Indian Territory be reversed.

WILLIAM T. HUTCHINGS,
Attorney for J. M. Robinson & Co., Plaintiffs.

Indorsed: "No. 18. Assignment of errors. Filed July 10th, 1899. Wm. P. Freeman, clerk."

And afterwards, to wit, on the said 10th day of July, 1899, the said appellants filed their cost bond in the office of said clerk, which is in the words and figures following, to wit.

In the United States Court of Appeals in the Indian Territory.

J. M. ROBINSON & Co., Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING, Interpleader, Defendants in Error. } Cost Bond.

Know all men by these presents, that we, J. M. Robinson & Co., and William T. Hutchings are held and firmly bound unto J. C. Belt and C. M. King, assignee, in the full and just sum of $200.00 to be paid to the said J. C. Belt and C. M. King, their successors, assigns, to which payment well and truly to be *paid* we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 8th day of July, 1899.

Whereas, lately at the June term of the United States court of appeals in the Indian Territory, in a suit pending in said court between J. M. Robinson & Co., appellants, and J. C. Belt and C. M. King, as appellees, judgment was rendered against the said appellants, and the said appellants have obtained a writ of error to the United States circuit court of appeals for the eighth circuit to reverse the judgment in the aforesaid suit, and a citation directed to the said J. C. Belt and C. M. King, citing and admonishing them to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Mo., 60 days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said J. M. Robinson & Co. shall prosecute said appeal to effect
79 and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

J. M. ROBINSON & CO.
WILLIAM T. HUTCHINGS.

Approved:
JOHN R. THOMAS, *Judge.*

Indorsed: "No. 18. Cost bond. Filed July 10th, 1899. Wm. P. Freeman, clerk."

UNITED STATES OF AMERICA, *Indian Territory,* } *sct:*

In the Court of Appeals.

I, William P. Freeman, clerk of the United States court of appeals in the Indian Territory, do hereby certify that the foregoing

is a full, true and complete transcript of the record and proceedings in the cause therein named, in said court, as the same appears on file and of record in my office. I further certify that the original writ of error and citation are returned herewith and made a part hereof.

Seal United States Court of Appeals in the Indian Territory.

In witness whereof, I have hereunto set my hand and affixed the seal of our said court at office in the city of South McAlester, Indian Territory, this 15th day of July, A. D. 1899.

WM. P. FREEMAN, *Clerk.*

(Canceled 10c. U. S. rev. stamp.)

Filed Sep. 12, 1899.

JOHN D. JORDAN, *Clerk.*

80 (*Appearance for Plaintiffs in Error.*)

And on the fifteenth day of September, A. D. 1899, an appearance of counsel for plaintiffs in error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

J. M. ROBINSON & Co., Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING. } No. 1320.

The clerk will enter my appearance as counsel for the plaintiffs in error.

WILLIAM T. HUTCHINGS.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1320. J. M. Robinson & Co., plaintiffs in error, *vs.* J. C. Belt and C. M. King. Appearance. Filed Sep. 15, 1899. John D. Jordan, clerk. William T. Hutchings, Muscogee, Ind. Ter., counsel for pl'ffs in error.

(*Appearance for Defendants in Error.*)

And on the twenty-first day of September, A. D. 1899, an appearance of counsel for defendants in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

J. M. ROBINSON AND COMPANY, Plaintiffs in Error,
vs.
J. C. BELT ET AL. } No. 1320.

The clerk will enter *my* appearance- as counsel for the defendants in error.

J. H. KOOGLER.
JOHN WATKINS.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1320. J. M. Robinson & Co., plaintiffs in error, *vs.* J. C. Belt, *et al.* Appearance. Filed Sep. 21, 1899. John D. Jordan, clerk. J. H. Koogler, John Watkins, counsel for def'ts in error.

(*Order of Submission.*)

And on the twenty-second day of January, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

MONDAY, *January* 22, 1900.

J. M. ROBINSON AND COMPANY, Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING. } No. 1320.

In error to the United States court of appeals in the Indian Territory.

This cause having been called for hearing in its regular order, the same was submitted to the court, without oral argument, upon the transcript of record from said United States court of appeals in the Indian Territory and the brief of counsel for plaintiffs in error filed herein.

(*Opinion.*)

And on the twelfth day of March, A. D. 1900, an opinion of said United States circuit court of appeals for the eighth circuit was filed in said cause, in the words and figures following, to wit:

82 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1899.

J. M. ROBINSON AND COMPANY, Plaintiffs in Error, *vs.* J. C. BELT and C. M. KING, Defendants in Error.	No. 1320. In Error to the United States Court of Appeals in the Indian Territory.

Mr. William T. Hutchings submitted a brief for plaintiffs in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

John C. Belt, a merchant residing and doing business in the Indian Territory, executed a deed of assignment conveying all his property to C. M. King, as assignee, for the benefit of his creditors. After the execution of the deed of assignment J. M. Robinson and Company, the plaintiffs in error, sued out an attachment against the assignor and attached the assigned property. King, the assignee in the deed and the defendant in error here, filed an interplea claiming the property under the deed of assignment. The interplea was tried to a jury in the United States court for the northern district of the Indian Territory, who returned a verdict for the interpleader, and from the judgment upon the verdict the plaintiffs in error appealed to the United States court of appeals in the Indian Territory which affirmed the judgment of the lower court, and thereupon they sued out this writ of error.

CALDWELL, circuit judge, after stating the case as above, delivered the opinion of the court.

Every question raised by the assignments of error in this case has been determined by the judgment of this court when it was previously here. Belt *v.* Robinson, 63 Fed. Rep. 90, 11 C. C. A. 39, 27 U. S. App. 273, and by the judgment of the supreme court of Arkansas in the case of King *v.* Hargadine-McKittrick Dry Goods Co., 60 Ark. 1, where the validity of the same deed of trust was in
83 issue. The act of Congress adopted and put in force in the Indian Territory the Arkansas statutes, including the statute on the subject of assignments for the benefit of creditors, and we have uniformly held that it was the duty of this court and the courts in the Indian Territory to follow the construction given to those statutes by the supreme court of Arkansas. Sanger *v.* Flow, 1 C. C. A. 56, 48 Fed. 152, 4 U. S. App. 32; Appolos *v.* Brady, 1 C. C. A. 299, 49 Fed. 401, 4 U. S. App. 209.

The assignments of error not covered by the opinions in the cases referred to have not the least merit, and on the authority of those cases the judgments of the United States court of appeals in the Indian Territory and of the United States court for the northern district of the Indian Territory are each affirmed.

Filed March 12, 1900.

84 (*Judgment.*)

And on the twelfth day of March, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

MONDAY, *March* 12, 1900.

J. M. ROBINSON & Co., Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING. } No. 1320.

In error to the United States court of appeals in the Indian Territory.

This cause came on to be heard on the transcript of the record from the United States court of appeals in the Indian Territory, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said United States court of appeals, and the judgment of the United States court for the northern district of the Indian Territory, in this cause, be, and the same are each hereby, affirmed with costs; and that J. C. Belt and C. M. King have and recover against J. M. Robinson and Co., the sum of twenty dollars for their costs herein and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the United States court for the northern district of the Indian Territory, with directions for proceedings therein according to law and justice.

March 12, 1900.

(*Petition for Writ of Error.*)

And on the twenty-first day of January, A. D. 1901, a petition for a writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

85 In the Supreme Court of the United States.

J. M. ROBINSON & COMPANY, Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING, Defendants in Error. } Petition for Writ of Error.

To the honorable Chief Justice and associate justices of the Supreme Court of the United States:

Your petitioners, J. M. Robinson & Co., plaintiffs in error in the above-entitled cause, respectfully show that the above-entitled cause

is now pending in the United States circuit court of appeals for the eighth circuit, and that a judgment has therein been rendered on the twelfth day of March, 1900, affirming a judgment of the United States court of appeals for the Indian Territory and a judgment of the United States court for the northern judicial district of the Indian Territory, and that the matter in controversy in said suit exceeds one thousand dollars, besides costs, and that the jurisdiction of none of the courts above mentioned is or was dependent in anywise upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of the different States, and that this cause does not arise under the patent laws, nor the revenue laws, nor the criminal laws, and that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error; and therefore your petitioners would respectfully pray that a writ of error be allowed them in the above-entitled cause directing the clerk of the United States circuit court of appeals for the eighth circuit to send the record and proceedings in said cause with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said plaintiffs in error may be reviewed, and, if error be found, corrected according to the laws and customs of the United States.

J. M. ROBINSON & CO.,
Plaintiffs in Error,
By DAVID GOLDSMITH AND
WILLIAM T. HUTCHINGS,
Their Attorneys.

86 (Endorsed:) No. 1320. J. M. Robinson and Co., plaintiffs in error, *vs.* J. C. Belt and C. M. King. Petition for writ of error. Filed Jan. 21, 1901. John D. Jordan, clerk.

(*Assignment of Errors.*)

And on the twenty-first day of January, A. D. 1901, an assignment of errors was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

In the Supreme Court of the United States.

J. M. ROBINSON & Co., Plaintiffs in Error,
vs.
J. C. BELT and C. M. KING, Defendants in Error. } Assignment of Errors.

Now come J. M. Robinson & Co. by their attorneys, and say that in the foregoing record and proceedings there is manifest error in the action and rulings of the United States court for the northern judicial district of the Indian Territory, as well as in the action, rulings and opinion of the United States court of appeals for the Indian Territory, and also in the action, rulings and opinion of the United States circuit court of appeals for the eighth circuit in this, to wit:

Said United States court for the northern judicial district of the Indian Territory erred:

First. In overruling the motion of the plaintiff for a new trial.

Second. In admitting in evidence the deed of assignment from John C. Belt to C. M. King.

Third. In admitting the following question: "I will get you to state if at any time after the deed of assignment there was anything said about this property being your wife's," and the answer thereto, and other questions and answers on the same line, which are as follows:

"A. There was.

Q. Was that while the inventory was being made or when?

A. That was after the deed had been made.

Q. Was the inventory complete or were you then working on the inventory?

87 A. I think they were working on the inventory at that time. The deed had been executed before that.

Q. State how this property just now claimed by your wife happened to be put in this deed?

A. Mr. Nichols asked me.

Q. Who is he?

A. He is the attorney who drew up the deed.

Continued direct examination.

By Mr. BRIZZOLARA:

Q. He was at Eufaula was he?

A. Yes, sir. He asked me — tell him all the property we had. Of course I gave this in. I don't know whether he meant all the property I had. I asked him if he meant everything we had and he said, 'Yes, everything you have.'

Q. And afterwards making the inventory the question came up with — to this that belonged to your wife?

A. Yes, sir.

Q. If the attorney was present then what did he say?

A. He said it didn't make any difference any way, I was liable to my exemption.

Q. You say the way it went in was by telling you to give a list of all you had?

A. Of all we had.

Q. Did you say anything to Mr. King at this time about this being your wife's property?

A. I think it was there. It was Mr. Nichols I spoke to. I think Mr. King was present."

Fourth. In refusing to permit the plaintiff to offer in evidence the records of the court and other competent evidence to show that the proceeds of sale of the attached property had been distributed by order of the court, and that the attaching creditors have received 87 per cent. of said proceeds of the sale owing to the failure of the bank in which said funds had been deposited by direction of the Department of Justice of the United States.

Fifth. In giving the following instruction: "That the interplea ed in this case by C. M. King states a good cause of action for the covery of the attached property or its proceeds; and if the jury lieve from the evidence that the averments in said interplea are substantially true they will find for the interpleader, C. M. King. But if they believe from the evidence that said averments are not substantially true they will find for the plaintiffs, J. M. Robinson & Co."

Sixth. In giving the following instructions:

"That the reservation to the assignor in his deed of assignment in is case as exempt, of property which he did not own or control, mistake of the assignor, does not make the assignment void, if in ct he conveys, regardless of such reservation, all the property of e assignor not exempt from execution sale; and the assignee, who the interpleader in this case, may prove by oral evidence that any rtion of the property mentioned in the deed of assignment was not e property of the assignor, but was inserted in the deed by mist-ke."

Seventh. In giving the following instructions:

"That the only substantial question presented in this case at this ne is whether certain household furniture situated in Eufaula and pair of mares, a buggy and harness which were set forth in Sched- e 'C,' which is a part of said deed of assignment, were at the time executing said deed the property of the assignor, J. C. Belt, or ere the property of his wife, and were inserted in said deed by istake; and if the jury believe from the evidence that said prop- ty was at the time of executing said deed the property of the wife J. C. Belt, and was inserted in said deed by mistake they will id for the interpleader, C. M. King."

Eighth. In giving the following instruction:

"That the claim by the assignor, J. C. Belt, in his deed of assign- ent as exempt from execution sale of certain items of personal roperty of inconsiderable value, such as wearing apparel valued at 0, a gold watch valued at $25, two lamps valued at $1.50, a chair alued at $3, and a trunk valued at $5, when in fact such articles, reason of their location in the Indian Territory, were not exempt om execution sale, such claim, if not made for the purpose of de- uding creditors, will not render the assignment void."

Ninth. In refusing to give the following instruction requested by aintiff:

"The court instructs the jury that if they believe that at the date the issuance of the attachment in this case the property or any part thereof situated in the Indian Territory at the time of the making of the deed of assignment and claimed by Belt as exempt in 'Schedule C' was the property of John C. Belt u will find your verdict in favor of the plaintiff, J. M. Robinson Co."

Tenth. In refusing to instruct the jury as follows:

"The court instructs the jury that there is no evidence in this se to sustain the claim of the interpleader and you will find your rdict in favor of the plaintiff, J. M. Robinson & Co."

Eleventh. In refusing to instruct the jury as follows as requested by plaintiffs:

"The court instructs the jury that the gift of the buggy and harness by Belt to his wife not on consideration deemed good in law is void and conveyed no title and was subject to attachment by the creditors of J. C. Belt at the time of the issuance of the attachment in this case."

Twelfth. In refusing after all the testimony was in to instruct the jury to return a verdict for the plaintiff.

Thirteenth. In rendering judgment herein that C. M. King, interpleader, have and recover of and from said J. M. Robinson & Co. the sum of $7,900.00 as per the stipulation and agreement mentioned in said judgment.

Fourteenth. In rendering judgment herein that said C. M. King, interpleader, have and recover of and from J. M. Robinson & Co. and plaintiffs mentioned in said stipulation, said sum of $7,900 as per said stipulation and agreement.

Fifteenth. In rendering judgment herein ordering the several plaintiffs mentioned in said stipulation to pay and refund to the court the amounts of money respectively received by them as set forth in said judgment.

Sixteenth. In rendering judgment herein that the clerk of said United States court for the northern judicial district of the Indian Territory withdraw and collect from the First national bank at Arkansas City, Kansas, the sum of $1,027, being 13 per cent. of the original proceeds of the property in controversy herein.

Seventeenth. In rendering judgment herein against said J. M. Robinson & Co. and said plaintiffs mentioned in said stipulation for said sum of $7,900, and at the same time ordering said several
90 plaintiffs to repay and refund to the court the said amounts of money received by them respectively, and at the same time ordering the clerk of the court to withdraw and collect from said First national bank at Arkansas City, Kansas, said sum of $1,027.

Eighteenth. In holding that the amendment of the answer of said J. M. Robinson & Co. to the interplea herein, did not represent a defence to said interplea, said amendment being amendment made on September 23rd, 1895, by leave of court, and being the amendment in and by which it was alleged that the proceeds of the property in controversy under said interplea had been distributed among the attaching creditors in accordance with the judgment of said United States court for the northern judicial district of the Indian Territory entered on the 16th day of December, 1893.

And the United States court of appeals for the Indian Territory erred in not reversing the judgment of said United States court for the northern judicial district of the Indian Territory, because of each of the several errors of the latter court as to its actions and rulings, which said errors have been hereinabove specified, and that said United States court of appeals for the Indian Territory erred in affirming said judgment of said United States court for the northern judicial district of the Indian Territory.

And said United States circuit court of appeals for the eighth

circuit erred in not reversing said judgment of said United States court for the northern judicial district of the Indian Territory because of each of the several errors of the latter court as to its actions and rulings, which said errors have been hereinabove specified; and said United States circuit court of appeals for the eighth circuit also erred in not reversing the judgment of said United States court of appeals for the Indian Territory because of each of the several errors of the latter court as to its actions and rulings as to each and every one of the several errors hereinabove specified, and that said United States circuit court of appeals for the eighth circuit erred in affirming said judgment of said United States court for the northern judicial district of the Indian Territory, and in affirming said judgment of said United States court of appeals for the Indian Territory.

91 Wherefore, and for divers other errors apparent on the face of said record, said J. M. Robinson & Co. pray that said proceedings as well as the judgments of both the United States court for the northern district of the Indian Territory, and the United States court of appeals in the Indian Territory, be reversed.

DAVID GOLDSMITH AND
WILLIAM T. HUTCHINGS,
Attorneys for said J. M. Robinson & Co.

(Endorsed:) No. 1320. J. M. Robinson and Co., plaintiffs in error, *vs.* J. C. Belt and C. M. King. Assignment of errors. Filed Jan. 21, 1901. John D. Jordan, clerk.

(*Bond on Writ of Error.*)

And on the twenty-first day of January, A. D. 1901, a bond on writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

Know all men by these presents, that we, J. M. Robinson & Co. and Edward J. Glasgow and Charles H. Hoke are held and firmly bound unto J. C. Belt and C. M. King, in the full and just sum of five hundred dollars to be paid to the said J. C. Belt and C. M. King, their heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this third day of January in the year of our Lord one thousand nine hundred and one.

Whereas, lately at the December term A. D. 1899, of the United States circuit court of appeals for the eighth circuit, in a suit depending in said court between said J. M. Robinson & Co. as plaintiffs, and also as plaintiffs in error, and said J. C. Belt and said C. M. King, as defendants, and also defendants in error, judgment was rendered against the said J. M. Robinson & Co., and the said J. M. Robinson & Co. have obtained a writ of error to the Supreme Court of the United States to reverse the said judgment in the aforesaid

suit, and a citation directed to the said J. C. Belt and C. M.
92 King citing and admonishing them to be and appear in the Supreme Court of the United States at Washington, in the District of Columbia, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said J. M. Robinson & Co. shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

J. M. ROBINSON & CO. [SEAL.]
EDWARD J. GLASGOW, JR. [SEAL.]
CHAS. H. HOKE. [SEAL.]

Approved by
DAVID J. BREWER,
Associate Justice of the Supreme Court U. S.

January 19, 1901.

In my judgment the sureties upon the foregoing bond are sufficient.

AMOS M. THAYER,
Circuit Judge.

(Endorsed:) No. 1320. J. M. Robinson and Co., plaintiffs in error, vs. J. C. Belt and C. M. King. Bond on writ of error. Filed Jan. 21, 1901. John D. Jordan, clerk.

(*Writ of Error.*)

And on the twenty-first day of January, A. D. 1901. a writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which is hereto attached and herewith returned.

93 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals before you, or some of you, between J. M. Robinson & Co., plaintiffs in error, and J. C. Belt and C. M. King, defendants in error, a manifest error hath happened, to the great damage of the said plaintiffs in error as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the

date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of January, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] J. M. Robinson and Co. plaintiffs in error *vs.* J. C. Belt and C. M. King. Writ of error. Filed Jan. 21 1901. John D. Jordan, clerk.

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In witness whereof, I hereto subscribe my name, and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this fourteenth day of February, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

94 *Citation.*

And on the fourteenth day of February, A. D. 1901, a citation was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which with the acknowledgment of service thereon, is hereto attached and herewith returned.

95 UNITED STATES OF AMERICA, *ss:*

To J. C. Belt and C. M. King, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the United States circuit court of appeals for the eighth circuit wherein J. M. Robinson & Co., are plaintiffs in error and you are

defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 19th day of January, in the year of our Lord one thousand nine hundred and one.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

We hereby acknowledge service of the within citation this 26th day of January, A. D. 1901.

KOOGLER & WATKINS,
Attorneys for C. M. King and J. C. Belt.

[Endorsed:] No. — Supreme Court of the United States. J. M. Robinson and Co. plaintiffs in error *vs.* J. C. Belt and C. M. King Citation Filed Feb. 14 1901 John D. Jordan, clerk.

96 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing ninety-five pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein J. M. Robinson and Company were plaintiffs in error, and J. C. Belt and C. M. King were defendants in error, No. 1320, December term, 1899, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the mandate in said cause was issued to the United States court for the northern district of the Indian Territory on the twelfth day of May, A. D. 1900.

I do further certify that the original citation with acknowledgment of service thereon and the original writ of error with my return thereto are hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this fourteenth day of February, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,053—U. S. C. C. of appeals, 8th circuit—Term No. 252 J. M. Robinson & Co. plaintiffs in error, *vs.* J. C. Belt and C. M. King. Filed Febuary 16, 1901.

No. 246

Supreme Court, U.S.
FILED
APR 23 1902
JAMES H. MCKENNEY,
Clerk.

Brief of Goldsmith for P. E.

SUPREME COURT OF THE UNITED STATES.

Filed April 23, 1902.

OCTOBER TERM, 1901.

No. 246.

J. M. ROBINSON & CO.,
Plaintiffs in Error,

vs.

J. C. BELT AND C. M. KING,
Defendants in Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

DAVID GOLDSMITH,
Attorney for Plaintiffs in Error.

St. Louis Law Printing Co., 311-313 Locust St. Main 1010, Kinloch A 202.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 252.

J. M. ROBINSON & CO.,
Plaintiffs in Error,

vs.

J. C. BELT AND C. M. KING,
Defendants in Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT FOR PLAINTIFFS IN ERROR.

On December 29th, 1891, the defendant in error, John C. Belt, who was engaged in business in the Indian Territory, executed there to his co-defendant in error, C. M. King, a deed of assignment for the benefit of creditors. Very shortly thereafter a large number of his creditors, including J. M. Robinson & Co., the plaintiffs in error, sued him by attachment in the United States Court in that territory, First Judicial Division, and their writs of attachment were levied concurrently on the property conveyed by the deed of assignment. Shortly thereafter the defendant in error, C. M. King, filed an interplea for

the attached property in the suit of J. M. Robinson & Co., this proceeding being had under and by virtue of Sections 356, 357 and 358 of Mansfield's Statutes of Arkansas. After so doing, he entered into a stipulation with the other attaching creditors (Printed Record pp. 21, 22), whereby it was agreed that this interplea should be considered as filed in every suit, and, virtually, that the result of the interpleader proceedings in the suit of J. M. Robinson & Co. should control all other suits. The property was, after its attachment, sold under the order of the Court pursuant to statutes governing the proceeding, and at such sale realized the sum of $7,900.00.

In his interplea King sets forth *verbatim* the deed of assignment under which he claims. Under that deed the creditors are divided into four classes, and three of these classes are preferred and given priority of payment in successive order; but each preference is on the condition, that the preferred creditors should, within ninety days, agree to accept all dividends to which they might severally be entitled under the deed "in full satisfaction and discharge of their respective claims against the said John C. Belt; and execute and deliver to the said John C. Belt a legal release therefor." The fourth class provided for by the deed included all remaining creditors, and such of the preferred creditors as should refuse or fail to comply with this condition; and the deed provides that the creditors included in this class should receive any residue of the proceeds of the assigned property after the satisfaction of the preferences. (Printed Record, p. 6.)

The trial of the interplea was had before a jury. It resulted in a verdict in favor of the interpleader, which found the attached property to be the property of the interpleader, and further set forth that the proceeds arising from the sale of the property

amounted to $7,900.00 (Printed Record, p. 59). Thereon the judgment hereinafter referred to was entered by the trial court. This judgment was subsequently affirmed, first, by the Court of Appeals for the Indian Territory, whose opinion will be found at pages 61 to 67 of the printed record, and then by the United States Court of Appeals for the Eighth Circuit, whose opinion is set forth at page 74 of the printed record. Subsequently a writ of error was sued out by J. M. Robinson & Co. from this Court.

The first question which will be presented to this Court on this hearing will be that of the validity of the deed of assignment hereinbefore referred to, the claim of its invalidity being based upon the condition requiring the preferred creditors to accept dividends in full satisfaction of their respective claims and to execute releases of those claims. This question is plainly raised by objections to the reception of the deed in evidence (Printed Record, pp. 24, 25), and by request of J. M. Robinson & Co. for a direction to the jury to find for them (Printed Record, pp. 49 and 56); and also by the request of an instruction by J. M. Robinson, which was as follows:

> "The Court instructs the jury that there is no evidence in this case to sustain the claim of the interpleader, and you will find your verdict in favor of the plaintiff, J. M. Robinson & Co." (Printed Record, p. 56);

and the question also arises under the instructions given by the trial court to the jury. At the same time, it should be observed that the particular objection to the deed, which we intend to present in this brief, was not considered by either of the appellate courts before which the cause was heard, but that their attention was directed to the question, whether the deed was void as a partial assignment

with a requirement for a release, it being held, or assumed, that the law of Arkansas, which permits a requirement for a release in a general assignment, but not in a partial assignment, controls.

Aside from the question alluded to, we intend to maintain that the evidence is insufficient to establish the priority of the deed of assignment over the attachments. No evidence whatsoever was adduced at the trial of any acceptance of, or assent to, the deed of assignment by any creditor of John C. Belt prior to the levy of those attachments, nor, indeed, at any time, whether before or after those attachments; there is not even an allegation in the interplea of any such acceptance or assent prior to the attachments, though there is an allegation, but, as we have just stated, no evidence, of an acceptance by some of the creditors prior to the filing on May 31, 1892, of the amended interplea by King (Printed Record, pp. 15, 16).

In addition to the foregoing matters, but one other contention will be advanced by us, and that relates to the nature of the remedy and judgment to which the plaintiff was entitled.

That contention arises under facts which are correctly stated in the opinion of the Court of Appeals for the Indian Territory (Printed Record, page 61), as follows:

> "The property attached was sold by order of Court, and proceeds paid into court, before the interplea was filed. At the May term, 1892, a demurrer to the interplea was filed and sustained by the Court, from which order King sued out a writ of error to the U. S. Court of Appeals. King gave no *supersedeas* bond, and the fund was by order of Court distributed *pro rata* to the attaching creditors according to their priorities. The fund had been deposited in a bank, designated as a U. S. depository. The bank failed, and only eighty-seven per cent. of the fund was recovered and distributed.

The fund amounted to $7,900.00. The Court of Appeals reversed the judgment on the demurrer, and on Sept. 19, 1895, the appellants filed their answer to the interplea, denying that King was owner by virtue of the deed of assignment, and alleging that the deed of assignment was fraudulent and void."

It thus appears that, when the judgment, to which the present writ of error is addressed, was rendered by the trial court, namely, September 28, 1895, all the proceeds of the attached property had been distributed among the attaching creditors under a prior order of the Court, and that the Court then had nothing in its custody or charge, or under its control, other than a claim of $1,027.00 against the defunct bank.

Under these circumstances the Court, upon the verdict hereinbefore set forth entered a judgment.

"That the said C. M. King, interpleader, have and recover of and from J. M. Robinson & Co., and the said above-named plaintiffs mentioned in said stipulation (reference is here made to the stipulation mentioned *ante* page 2), the sum of seven thousand nine hundred ($7,900.00) dollars, as per said stipulation and agreement, together with the costs of this suit. And it further appearing to the Court from the record and evidence submitted that the proceeds of the sale of the property in this case were deposited by the Clerk of this Court in the First National Bank at Arkansas City, Kansas, and that such bank thereafter suspended payment, and that by reason of such suspension only 87 per cent. of such funds were withdrawn from said bank, leaving a balance therein of 13 per cent. of the original proceeds, amounting to the sum of $1,027.00, subject to the order of this Court.

"And whereas, it further appearing that nearly the whole amount of the balance of such proceeds amounting to the sum of $6,473.62 were paid to plaintiffs and received by them on the 1st day of March, 1894, and

were shared among themselves in the following proportion and amounts, viz: (The court here sets forth the names of the attaching creditors and the amounts previously paid to each under the order of distribution.)

"It is therefore considered and ordered by the Court that the Clerk of this Court is hereby directed to withdraw and collect from First National Bank at Arkansas City, Kansas, the above mentioned amount of proceeds remaining due therefrom, and that the said plaintiffs are hereby ordered to pay and refund to this Court the said amounts of money, respectively received by them, within ninety days from this date; any and all of such sums of money collected or paid into court in compliance with this order shall be paid by the Clerk of this Court to said C. M. King, the interpleader herein.

"To all of which plaintiffs except, and pray an appeal, which is allowed, and plaintiffs are allowed forty days in which to file a bill of exceptions." (Printed Record, pp. 22 and 23.)

It thus appears that by its judgment the trial court undertook to do three things, namely:

1. To render a *personal* judgment for the sum of seventy-nine hundred dollars, being the amount of the entire proceeds of the sale of the property in controversy, not only against the plaintiffs in error, J. M. Robinson & Co., but also against the other attaching creditors;

2. To order plaintiffs in error, and the other attaching plaintiffs, to pay and refund to the court the amounts paid to them respectively under the prior order of distribution, the amounts so paid to them respectively being set out in the judgment; and

3. To order the Clerk of the Court to withdraw and collect from the First National Bank at Arkansas City, Kansas, the depository which had failed, the

thirteen per cent. of the proceeds of the property in controversy which remained due from that bank.

We shall contend that this judgment is erroneous, principally because of the entry of a personal judgment against the plaintiffs in error, J. M. Robinson & Co.; but we shall also maintain that it was erroneous because it included persons who were not parties to the cause, and because it gave various remedies without confining the interpleader to one satisfaction.

The foregoing contentions with regard to the effect of the deed of assignment are presented by the following rulings of the trial court, namely:

1. The overruling by the trial court of a motion by plaintiff in error that the jury should be instructed to find for them. (Printed Record, p. 56.)

2. The refusal by the trial court of the instruction below set forth, which was requested by the plaintiffs in error. (Printed Record, p. 56.)

It follows from the foregoing that the following assignments of error, set forth on pages 78 and 79 of the printed record, and the numbered respectively, tenth, twelfth, thirteenth, fourteenth and seventeenth, will be relied upon in our argument:

> "Tenth. In refusing to instruct the jury as follows:
>
> "The court instructs the jury that there is no evidence in this case to sustain the claim of the interpleader, and you will find your verdict in favor of the plaintiff, J. M. Robinson & Co."
>
> "Twelfth. In refusing, after all the testimony was in, to instruct the jury to return a verdict for the plaintiff."
>
> "Thirteenth. In rendering judgment herein that C. M. King, interpleader, have and recover of and from said J. M. Robinson & Co. the sum of $7,900.00 as per the stipulation and agreement mentioned in said judgment."
>
> "Fourteenth. In rendering judgment herein that said C. M. King, interpleader, have and recover of

and from J. M. Robinson & Co. and plaintiffs mentioned in said stipulation, said sum of $7,900 as per said stipulation and agreement."

"Seventeenth. In rendering judgment herein against said J. M. Robinson & Co. and said plaintiffs mentioned in said stipulation for said sum of $7,900, and at the same time ordering said several plaintiffs to repay and refund to the court the said amounts of money received by them respectively, and at the same time ordering the clerk of the court to withdraw and collect from said First National Bank at Arkansas City, Kansas, said sum of $1,027."

ARGUMENT.

I.

The deed of assignment involved in the case at bar was invalidated by the requirement therein for the release of debts, and, therefore, the trial court erred in refusing to instruct the jury to find in favor of the plaintiffs in error, and also in refusing to instruct the jury that there was no evidence to sustain the claim of the interpleader.

The first question which will arise on this hearing is that of the validity of the deed of assignment for the benefit of creditors under which the defendant in error, King, claims in his interplea. That the question resolves itself into two inquiries, namely (1), the controlling effect of the decisions in Arkansas, upon which the conclusions of the Court of Appeals for the Eighth Circuit depend, and (2) the proper conclusion to be reached, independently of those decisions.

These inquiries we will proceed to follow in their inverse order, that is, we shall first take up the inquiry as to the effect which ought to be given to this assignment of error on the hypothesis that this Court is free to form and follow its own judgment, uncontrolled by the decisions of Arkansas, and we shall then proceed to show that such freedom of action exists.

The question of the validity of an assignment for the benefit of creditors, which provides for preferences among creditors on the condition of the release of any unpaid balances of the preferred claims, arose in the early days of our republic. No rule of public policy had had time to formulate itself, and the laxity of existing conditions appears to have influenced the course of judicial decision. It had become the practice in some of the States to make conditional assign-

ments with requirements for releases, and the courts were indisposed to override it. In one or more of the decisions the view was expressed that the validity of the requirement had been recognized in England by *The King v. Watson*, 3 Price, 6; but this view is discountenanced by the recent decision in *Duggan v. Bliss*, 4 Colo. 226, and other cases, and cannot be reconciled with the ruling which now prevails in England. *Spencer v. Slater*, 4 Q. B., Div. 13. Indeed, the practice is properly ascribed by an early judicial opinion to the "*astutia Americana*" in the warehousing of effects of debtors (*Lippincott v. Barker*, 2 Binn. 191, decided in 1809).

In great part through judicial deference to practices which had come into vogue in the community, the validity of the requirement under consideration came to be recognized in Alabama, Pennsylvania, Virginia, South Carolina, Maine, New Hamsphire, Maryland and Rhode Island. But this was not accomplished, even in these States, without conflict of opinion and even of decision. To what extent that conflict existed, we do not feel called upon to consider. It is of greater importance that courts, which, in deference to prevailing practices and conditions, sustained assignments of this character, afterwards recognized the fallacy of their ruling, and regretted their inability, under the doctrine of *stare decisis*, to change it.

Said the Supreme Court of Alabama, in 1839, in *Ashursts v. Martin*, 9 Porter, pp. 572–573:

> "If this question could be considered open in this State, we *should not hesitate* to decide, on principle, that such a stipulation in a deed of assignment would be a manifest violation of the statute of frauds; and such too we consider at the present day to be the weight of authority on an examination of the adjudged cases."

In like strain the Supreme Court of Pennsylvania, in 1834, remarked in *Livingston v. Bell*, 3 Watts, p. 201:

> "Though it would have been better had these conditional assignments been brought within the purview of the *13 Eliz.*, as they might have been originally, and, in fact, have been in some of our sister States, it is too late to do so now."

Similar, though not so pronounced, was the following language of the Supreme Court of Virginia in *Phippen v. Durham*, 8 Gratt, p. 464:

> "If the question were *res integra* * * * I would be inclined to answer it in the negative. While the many cases on this subject are conflicting, I think the preponderance is against the validity of such a deed."

It is, therefore, not surprising that a leading work upon this subject, in commenting on the question now being considered, should remark:

> "Wherever such an assignment has been sustained, it has been against the sound conviction and judgment of the courts, and with a constant expression of regret that a doctrine at variance with equity and with morals must be maintained upon the prevailing understanding of the public."
>
> *Bump on Fraudulent Conveyances*, 4th Ed., Sec. 420, p. 437.

But, if courts did not undo the ruling, which was opposed to their better judgment, they nevertheless limited and qualified it by holding that the condition for a release was permissible only in a general and not in a partial assignment (*Thomas v. Jenks*, 5 Rawle. 221; *Green v. Trieber*, 3 Md. 11; *Gadson v. Carson*, 9 Rich. Eq. 252; *Gordon v. Cannon*, 18 Gratt 387; *Rankin v. Loder*, 21 Ala. 380; *Nightingale v. Harris*, 6 R. I. 321); and some cases even went to the extent of holding that the conditional assignment was in-

valid, unless it appeared upon its face to be a conveyance of all the property of the assignor (*Barnitz v. Rice*, 14 Md. 24).

To us it seems that this qualification is not consistent with the theories underlying the original ruling, which were that the debtor was entitled to exercise dominion over his own property by creating preferences, and that, since every creditor was at liberty to give or refuse a release as he chose, the provision for a release was not coercive. These theories seem to us to be just as applicable to partial assignments as to general assignments, since the debtor's right of dominion over a part of his property is the same as that over his entire property, and since a release in the one case would be just as voluntary as in the other. However, the practical and substantial difference between the equities in the two cases outweighed mere matter of logic; and inconsistency of ruling is to be expected from a tribunal which is at war with itself, and which feels called upon to administer a ruling to which it is at heart opposed.

Nor did the opposition to a condition for a release in assignments stop with limitations of the rulings of the Court in those States in which the validity of the condition had been recognized. The Legislatures in Maine, New Hampshire, Pennsylvania, Vermont and Alabama undid what the courts had not the courage to undo (*Pearson v. Crosby*, 23 Maine, 261; *Hurd v. Silsby*, 10 N. H. 108; *Perry Ins. Co. v. Foster*, 58 Ala. 502; *Burrill on Assignments*, 6th Ed., secs. 159 and 161.)

We have called attention to the course of judicial and legislative action in the States, in which the condition under consideration has been sustained, with a view to showing that the precedents there established are not calculated to win adherence or sup-

port; nor did they win either. In every other State in which the question has arisen, with the single exception of Arkansas, the courts have vigorously assailed the insolvent debtor's right to exact a release in an assignment for the benefit of his creditors, and have declared assignments of that character fraudulent and void. We content ourselves with the citation of a single authority from each of the jurisdictions, in which this has been done.

Wakeman v. Groves, 4 Paige 23; 11 Wend. 187;
Hubbard v. Naughton, 43 Mich. 220;
Miller v. Conklin, 17 Ga. 430;
Ingraham v. Wheeler, 6 Conn. 277;
Duggan v. Bliss, 4 Colo. 226;
Brown v. Knox, 6 Mo. 302;
Conklin v. Carson, 11 Ill. 503;
Greeley v. Dixon, 21 Fla. 412;
Sperry v. Gallaher, 77 Iowa, 107;
Atkinson v. Jordan, 5 Ohio, 293;
Wilde v. Rawlings, 1 Head (Tenn.) 34;
Ware v. Wanless, 2 Wyom. 144;
Hafner v. Irwin, 1 Ired. (Law) 490.

Various grounds are assigned by these authorities as the basis of their ruling. They are substantially that the insolvent by his requirement for a release coerces his creditors, dictating his own terms and making a bankruptcy law for himself. To use the expression employed in *Grover v. Wakeman*, 11 Wend. 200, and quoted with approval by other judges, the provision is obnoxious, because it enables the debtor "to operate upon the fears of his creditors and coerce them into his own terms." The same is pithily expressed in *Ingram v. Wheeler*, 6 Conn., p. 283, as follows:

> "No insolvent debtor has the right to prescribe terms to his creditors, to say to these, 'take up these crumbs on my own terms, or have nothing.'"

The requirement is repugnant to our moral sense, as well as to legal principle and authority.

> "It is often said that this is 'coercive,' 'repressive,' and unjust, and so it is. But the better way of putting it is that it is fraudulent. It is fraudulent in the plainest sense."
>
> *Bigelow on Fraud*, Vol. 2, p. 282.

And says Mr. Bump in his work on Fraudulent Conveyances (4th ed.), p. 434, section 415, after first condemning the condition from a legal standpoint:

> "The injustice and impropriety of such an effort on the part of the debtor must, moreover, shock the moral sense, and its fraudulent design and effects upon the rights of those creditors who refuse to release are obvious."

The validity of an assignment requiring a release came before this Court in *Brashear v. West*, 7 Pet. 615; and, while the assignment was there held valid, this was done with considerable reluctance, and only because the rulings in Pennsylvania, where the assignment was made, were deemed obligatory. "We are far from being satisfied," says this Court through Chief Justice Marshall, "that upon general principles such a deed ought to be sustained." And many authorities upon the subject treat this case as an authority against the legality of the character of conveyance under consideration. In consonance with that view of it *Burrill on Assignments* (6th ed.), sec. 163, p. 212, concludes its observations as follows:

> "Taking into consideration the opinion expressed by Chief Justice Marshall in Brashear v. West, it seems probable that, should a case be brought before the Supreme Court of the United States *which could be decided on general principles*, and free from the controlling influence of said construction, *the decision would be against the right to stipulate*."

And this expectation receives direct warrant from the recent utterances of this Court in *Security Trust Co. v. Dodd*, 173 U. S., pp. 633-634, wherefrom the following extract is taken:

> "An assignment containing a provision of this kind would have been in many, perhaps in most, of the States void at common law. (Citing authorities.) * * * In *Brashear v. West*, 7 Pet. 608, an assignment containing a provision of this kind was upheld with apparent reluctance upon the ground that in Pennsylvania, where the assignment was made, it had been treated as valid."

We are confident that these authorities, as well as the legal principles underlying the subject, will lead this Court to declare the assignment in controversy invalid, unless the decisions of the Supreme Court of Arkansas are controlling; and, therefore, we pass to a brief statement of these decisions, and the consideration of their effect.

The legality of an assignment with a requirement for the release of the assignor was first decided by the Supreme Court of that State in *Clayton v. Johnson*, 36 Ark. 406, wherein the assignment was sustained. Shortly thereafter the question again arose in *McReynolds v. Dedman*, 47 Ark. 347, wherein the assignment was declared fraudulent, because it provided for the payment of the surplus to the assignor to the exclusion of non-assenting creditors. This case, however, contains a *dictum* to the effect that, in the absence of such provision, the assignment would be valid. In the same volume, and only a few pages later, comes the case of *Collier v. Davis*, 47 Ark. 367, wherein the assignment, though it was a copy of the one which had been upheld in *Clayton v. Johnson*, was declared void, because it failed to make provision for the distribution of any surplus left after the payment of creditors who should release.

In that case *Clayton v. Johnson*, is expressly overruled, and the following statement is made with regard to the current of authority:

> "In New York, and perhaps in every other jurisdiction where the question has arisen, except in those mentioned in *Clayton v. Johnson*, the invalidity of assignments stipulating for a release as a condition of receiving any benefit under the assignment is established. And it is a *remarkable fact* that, in an opinion prepared by the late Chief Justice, the drift of the decisions on this subject in the several States has been totally misapprehended."

The last mentioned case was followed by *Wolf v. Gray*, 53 Ark. 75, in which the three prior cases are considered at some length, and it was held that *Clayton v. Johnson*, was intended to be overruled only, when the assignment fails to give to the non-preferred creditors the surplus remaining after the satisfaction of the preferred debts. While this is now the settled law of the State of Arkansas, it cannot be said to have been so prior to the decision of *Wolf v. Gray*. That decision was rendered on March 22, 1890, which was more than three months after the introduction in Congress of the act of May 2, 1890, for the enlargement of the jurisdiction of the United States Court in Indian Territory, and little more than one month prior to the final passage of the act; nor was the decision reported until a considerable time thereafter.

Under such circumstances these rulings would not have been obligatory upon the Federal courts, even if they had resulted from the construction of a local statute adopted by Congress in the Act of 1890. But no such claim can be maintained. These rulings do not in any way depend upon any statute local or peculiar to Arkansas.

And here we call attention to the following remarks of the Circuit Court of Appeals in this case:

> "The Act of Congress adopted and put in force in the Indian Territory the Arkansas statutes, including the statute on the subject of assignments for the benefit of creditors, and we have uniformly held that it was the duty of this court, and the Courts in the Indian Territory, to follow the construction given to those statutes by the Supreme Court of Arkansas." (Printed Record, p. 74.)

The inference to be drawn from these remarks is that the question at law is controlled or affected by some statutory provisions of Arkansas with reference to assignments for the benefit of creditors. We cannot understand how the Circuit Court of Appeals fell into the error of making this assumption; we have already stated that it is not warranted.

The utmost that can be claimed is that the invalidity of the requirement for a release in an assignment for the benefit of creditors rests upon the statute of fraudulent conveyances known as 13 Eliz. ch. 5; (*Burrill on Assignments*, 6th Ed.; sec. 11; *ibid.* sec. 295, *et seq.*; *Bump on Fraudulent Conveyances*, 4th Ed., sec. 12 *et seq.*; *Amer. & Eng. Enc. of Law*, 2d Ed. Vol. 14, p. 222); and that this statute together with the common law became operative in the Indian Territory through the adoption of Chapter 20, Mansfield's Digest of the Statutes of Arkansas, by Congress in the Act of May 2, 1890. However, this claim could not avail the defendants in error, since the statute of 13 Eliz. was under consideration and applied in the various decisions upon which we have hereinbefore relied, and since it is well settled that the adoption of a statute does not carry with it the construction received in the State from which it is taken, if such construction is at variance with that which the same statute has, prior to its adoption, re-

ceived in other jurisdictions. *Conlan v. Doull*, 133 U. S. 216; *Whitney v. Fox*, 166 U. S. 637.

And even that claim would not be strictly accurate; for the statute of 13 Eliz. is merely declaratory of the common law, which in itself denounces and avoids conveyances made with the intent to defraud, hinder or delay creditors (*Wait on Fraudulent Conveyances*, sec. 16, p. 36, *et seq.*; *Burrill on Assignments*, 6th ed., sec. 11, p. 20; *Bump on Fraudulent Conveyances*, 4th ed., sec. 12, *et seq.*; *Bigelow's Law of Fraud*, Vol. 2, p. 24, *et seq.*; *14 Amer. & Eng. Enc. of Law*, 2 ed. pp. 222, 223.

Indeed, this Court has declared, in the extract hereinbefore taken from the case of *Security Trust Co. v. Dodd*, 173 U. S. 633, that an assignment which requires releases from creditors "would have been in many, perhaps in most, of the States *void at common law.*"

The question of the validity of the assignment in controversy, therefore, depends solely upon the common law; and it would do no credit to our own discrimination, if we were to undertake to argue that the Federal courts are free to exercise and follow their own judgment in the administration of the common law in Federal territory with reference to transactions arising therein. To say that they are at liberty so to do would not be sufficiently explicit. Their duty requires them to do this, even when exercising their functions in the States, and when their judgment leads them to conclusions in conflict with the rulings of the courts of the State in which they are sitting. *Chicago v. Robbins*, 67 U. S. 418; *Merrick v. Railroad*, 107 U. S. 102; *Baltimore etc. Ry. Co. v. Baugh*, 149 U. S. 368.

Every individuality has its own responsibilities; and these it should not shirk at the expense of its identity. The higher its function or sphere of ac-

tion, the greater its responsibility; and no responsibility with respect to independence of judgment and action is greater than that of the judiciary.

II.

The deed of assignment, even if otherwise valid, did not take effect as against the attachment of the plaintiffs in error, since there was no evidence of any acceptance of it, or assent to it, by any creditors.

We have already in our foregoing statement (*ante* page 4) alluded to the fact that it does not anywhere appear that any creditor executed the release required by the deed of assignment under which the interpleader C. M. King claims, or that any creditor in any manner accepted or assented to that deed.

Under these circumstances the interpleader was not entitled to recover. Although the authorities are conflicting, we are willing to concede that consent would have been presumed, and therefore need not have been proven, if the deed of assignment had been unconditionally in favor of the creditors for whose benefit it was made. But it was not, since it required a release; and no presumption will lie that creditors were willing to release and accepted the assignment with that requirement. It is well settled that such an assignment only overrides or takes priority over a subsequent attachment of the assigned property, in so far as it was accepted or assented to prior to the attachment.

McCain v. Pickens, 32 Ark. 399;
Halsey v. Whitney, 4 Mason, 206;
Swearingen v. Slicer, 5 Mo. 241;
Drake v. Rogers, 6 Mo. 317;
Jewett v. Barnard, 6 Maine, 381;
Todd v. Beckham, 11 Maine, 41;
Burrill on Assignments, 6 Ed., p. 341.

The question, whether the release shall be given, is one which every creditor is entitled to decide for himself; and courts are not warranted in presuming in advance what his decision will be.

> "The assent of creditors to an assignment, apparently for their benefit, will be presumed; but where the assignment is conditional that the assignor shall be released, assent will not be presumed." (Syllabus of McCain v. Pickens, *supra*.)

This authority would, in itself, suffice if the decisions of the Supreme Court of Arkansas were controlling. In this instance, however, all or nearly all authority is in accord.

> "So, where there are conditions in an assignment, as, for instance, that the creditors shall release their debts, the presumption of assent does not arise, because it involves a question of discretion upon which different minds may draw different conclusions." Burrill on Assignments, 6 ed., p. 341.

To the same effect are all the decisions cited by us in support of our present contention.

III.

The Judgment of the Trial Court in This Cause Was Erroneous.

The plaintiffs in error are entitled to complain of the judgment of the trial court, among other reasons, because it includes persons who are not parties to the cause, and, further, because it gave to the interpleader cumulative rights without limiting him to one satisfaction.

The first of these grounds of complaint arises from the fact, that the trial court undertook to render a personal judgment for seventy-nine hundred dollars not only against the plaintiffs in error, J. M. Robinson & Co., but also against the other attaching cred-

itors. (Printed Record, p. 22.) What jurisdiction had the court of these other creditors in the cause at bar? True, they had entered into a stipulation, each for himself, to abide the final result of this cause, but that did not warrant a judgment against them in this cause, and this, moreover, when the stipulation on its face showed a contrary intention. (Printed Record, pp. 21, 22.)

As to the second of these grounds we have already in our statement sufficiently called the attention of the Court to the fact that the judgment, while affording three remedies, fails to provide that moneys received under one of these remedies should operate as a satisfaction of either of the others; as, for instance, that the refunding by creditors of amounts previously collected should operate *pro tanto* as a satisfaction of the personal judgment.

But, while the judgment appears to us to be subject to the foregoing objections, we do not lay as great stress upon them as we otherwise might, because the need for their consideration is obviated by the existence of a third and more important objection, which is, that the personal judgment which the trial court rendered against the plaintiffs in error (as well as other attaching creditors) for the value of the goods in controversy, the same being for seventy-nine hundred dollars, was erroneous and even beyond the powers of the Court.

The interplea in this cause arose and is provided for by sections 356 and 358 of Mansfield's Digest of the Laws of Arkansas, which relate to the subject of attachment. These provisions read:

> "Sec. 356. Any person may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or of any attached debt, present his complaint, verified by oath, to the court disputing the validity of the attachment, or stating a

claim to the property, or an interest in or lien on it under any other attachment or otherwise, and setting forth the facts upon which such claim is founded, and his claim shall be investigated."

"Sec. 358. The court may hear the proof, or may order a reference to a commissioner, or may impanel a jury to inquire into the facts. If it is found that the claimant has a title to, a lien on or any interest in such property, the court shall make such order as may be necessary to protect his rights. The cost of this proceeding shall be paid by either party at the discretion of the court."

Now, it will be borne in mind that, when the property in controversy was levied upon, the interpleader had his common law action of trover or conversion against the parties connected with the levy, and he also had the right, if he elected to exercise it, to possess himself of the property itself by action in replevin. To these remedies the statutory provisions above referred to added another, which was, the right to go into the court which was in the custody of the property and ask the court for a restoration of it, or, in case of its sale by the court, to the payment of its proceeds in its place. But this third remedy in no wise took the place of the right of personal action in trover or conversion; and, being a purely statutory remedy, it extended no further, and could not operate otherwise, than the statute itself provided. There being no provision by statute for personal judgment, it follows that none could be rendered.

The very question, which we are now considering, came before the Circuit Court of Appeals for the Eighth Circuit in *Swift & Co. v. Russell*, 38 C. C. A. 259; same case 97 Fed. Rep. 443; and it was there determined in accordance with the views above expressed, and the claim which we are now advancing.

The decision is by Sanborn, Judge, and its effect sufficiently appears from the following extract:

> "Consequently the nature of the proceeding by interplea is fixed, and the extent of the remedy granted must be determined, by these sections of the statutes. When these are carefully read, the attention is sharply challenged by the facts, that the interplea may be interposed before the sale of the attached property, or before its proceeds are paid over to the plaintiff, but not after such payment; that the claimant must set forth the facts on which his claim to the property or its proceeds is founded, but nothing more; that the court may find whether or not the claimant has a title to, a lien upon, or an interest in the property, but nothing else; and that it may make such order as may be necessary to protect his rights in the property or its proceeds, and may direct which party to the proceeding shall pay the costs, but it may grant no other relief. There is no provision in these sections for an assessment of damages for the appraisal of the property, or for the recovery of its value. The proceeding authorized by them is not an action for the value of the property, or for damages for its taking. It is not an action for the recovery of the property. Indeed, it is not an action at all. It is more in the nature of a proceeding *in rem*. **The extent of the adjudication, which it authorizes, is a determination of the rights and interests of the plaintiff and the interpleader in the attached property or its proceeds in the hands of the marshal, and the limit of the remedy it provides is the delivery of that property, or the payment of its proceeds, to the party whom the court finds to be entitled to them, and the assessment of the costs.** '*Expressio unius est exclusio alterius*,' **and a finding and recovery of the value of the property attached are not mentioned, and are, therefore excluded from the adjudication and from the remedy which these sections of the statutes permit.**"

The same ruling has been made by the Supreme Court of Arkansas in

Jefferson v. Dunavant, 53 Ark. 133;
Fly v. Grieb's Adm'r, 62 Ark. 209.

In the former of these authories (*Jefferson v. Dunavant*) the *syllabus* reads as follows:

> "The statute which authorizes the intervention of a claimant of property attached (Mansf. Dig., section 358) contemplates only a trial of the right of property; damages for detention of the property are recoverable in a separate action."

In *Fly v. Grieb's Adm'r* the jury found, and the Court rendered judgment for, the value of the property attached, as was done in the case at bar, but this was held to be erroneous, the Court saying that "the interpleader was entitled to the proceeds of the attached property in the hands of the sheriff, the same having arisen from its previous sale, and that it was error for the Court to render a judgment against plaintiffs for the property or its value."

And the Court add:

> "If the amount did not equal the true value of the property, or if the interpleader was damaged otherwise by unlawful taking or detention of the same, he would have to seek redress in another proceeding. *The issue on the interplea is for the property itself; or, if it has been sold, for its proceeds.*"

The foregoing decisions being direct and explicit, and they being founded upon clear reasoning and principle, recourse to further authority seems unnecessary; we are also somewhat loth to refer to the decisions in other jurisdictions, because it is apparent that in referring to them care must be taken to see that they are based upon similar statutory provision, in order to insure their applicability. Yet, we find in some of the other States statutes so similar and decisions so pointed, that we can not refrain from briefly alluding to them.

The case of *Jennings v. Hoppe*, 44 Iowa, 207, presents a statute and a decision in precise accord with those hereinbefore quoted. The purport of the statute

is set forth in the decision itself at sufficient length to show that it is a copy, or almost a verbal copy, of the statute of Arkansas; and the case presented the identical question involved in *Jefferson v. Dunavant, supra*, namely, whether, after a recovery on an interplea in an attachment proceeding, suit would lie for damages to the property which had been in controversy. The Court held that this could be done *on the ground that no recovery for damages could have been had in the interpleader proceedings*, saying:

> "The only question that could be determined was his right or title to the property; nothing more is contemplated. * * * This proceeding of intervention is purely statutory, and in the absence of a provision expressly, or by necessary implication, allowing damages to be recovered, we are at a loss to know upon what principle such a claim can be based."

In the State of Missouri provision is made by statute for interplea or intervention by a claimant of the attached property, the provision being:

> "Any person claiming property, money, effects or credits attached, may interplead in the cause, verifying the same by affidavit, and issues may be made upon such interplea, and shall be tried as like issues between plaintiff and defendant without any unnecessary delay." (Revised Statutes of Missouri 1889, Sec. 372.)

And under this statute it is the settled law of the State, that no personal judgment can be rendered against the attachment plaintiff for the value of the attached property.

> Mills v. Thomson, 61 Mo. 415;
> Hewson v. Tootle, 72 Mo. 632;
> Williams v. Braden, 57 Mo. App. 317.

In the first of these cases, (*Mills v. Thomson*), the verdict of the jury found the value of the property attached and the damages thereto. With respect to this finding the Court said:

"This verdict was a *mere nullity*, and the Court should have set it aside."

In *Hewson v. Tootle* the Court held, as stated in the *syllabi* of the case:

"Upon the trial of an interplea and attachment, the verdict must be responsive to the issue presented, viz: whether the property attached was the property of the interpleader. A mere money verdict in favor of the interpleader will not do."

The effect of the case of *Williams v. Braden* is shown by the following extract from it:

"The only issue between the plaintiff and the interpleader was whether or not the corn was the property of the interpleader. This, and nothing more, was for decision in the controversy between the attaching plaintiff and the interpleader Hicks. The trial court erred in rendering a money judgment, as in a case of trespass, against the plaintiff."

Indeed, we find a decision as old as *McClain v. Douglass*, 6 Ired. Law (N. C.) 232, to the same effect as the authorities hereinbefore quoted, though it is to be added that the statute involved in that case is somewhat more specific than that controlling the decisions in Arkansas, Iowa and Missouri. The principle of the case, however, is the same. The court states:

"The only judgment the court is authorized to pronounce is upon the title, and the costs incurred in bringing the interplea. A rightful verdict is the answer of a jury to the court concerning the matters of fact committed to their trial and examination. Whatever they find beyond this is impertinent and immaterial and to be rejected."

We submit that the foregoing authorities are controlling, and dispose of the question under consideration.

Respectfully submitted,

DAVID GOLDSMITH,

Attorney for Plaintiffs in Error.

POOR COPY

Supreme Court of the United States.

No. 46.—October Term, 1902.

J. M. Robinson & Co., Plaintiffs in Error, vs. John C. Belt et al. } In error to the United States Circuit Court of Appeals for the Eighth Circuit.

[October 27, 1902.]

This was a writ of error to a judgment of the Circuit Court of Appeals for the Eighth Circuit affirming a judgment of the Court of Appeals of the Indian Territory, which latter court affirmed the judgment of the United States Court for the Northern District of such Territory, sustaining an interplea by one King to recover the value of certain property attached and sold by Robinson & Co., which had been conveyed to King as assignee by a deed of assignment made by his co-defendant Belt.

The facts of the case are substantially as follows: One John C. Belt, a resident of Arkansas, who was engaged in business in the Indian Territory, on December 29, 1891, made an assignment for the benefit of his creditors to King as assignee.

On the following day "J. M. Robinson & Co.," plaintiffs in error, brought suit against Belt in the United States court in that Territory, sued out an attachment and levied upon the property assigned. Belt failed to plead, and judgment by default was taken against him, and the attachment sustained.

On May 31, 1892, defendant in error King filed an interplea, setting out his deed of assignment, and claiming the property as his, by virtue of such deed. After so doing, he entered into a stipulation with other attaching creditors, of whom there were a large number, whereby it was agreed that this interplea should be considered as filed in every suit, and virtually that the result of the interpleader proceedings in the suit of J. M. Robinson & Co. should control all other suits. The property was, after its attachment, sold under order of court, pursuant to statutes governing such proceedings, and at such sale realized the sum of $7,900.

A demurrer to the interplea was filed and sustained by the court, from which order King sued out a writ of error from the United States Court of Appeals. He gave no supersedeas bond, however, and the fund was by order of the court distributed *pro rata* to the attaching creditors according to their priorities. The Court of Appeals reversed the judgment on the demurrer, and on September 19, 1895, Robinson & Co. filed their

answer to the interplea, denying that King was owner by virtue of the deed of assignment, and alleged the same to be fraudulent and void; denied that King filed a complete inventory; denied that certain personal property described in the deed of assignment was the property of the wife of Belt, and admitted that the property described in the deed was seized under the attachment.

The trial on the interplea was had before a jury and resulted in a verdict in favor of the interpleader, which found the attached property to be the property of King as assignee. A judgment was thereupon entered in his favor, which was subsequently affirmed, first, by the Court of Appeals for the Indian Territory, and then by the Circuit Court of Appeals for the Eighth Circuit. Whereupon a writ of error was sued out by Robinson & Co. from this court.

Mr. Justice BROWN delivered the opinion of the Court.

This is a contest between certain attaching creditors of John C. Belt, and one King, his voluntary assignee for the benefit of creditors.

The record is in an unsatisfactory condition. It is impossible to tell whether the plaintiffs are a corporation or a partnership, and if the latter, who constitute the firm, or against what individuals the judgment of the court was rendered. Although the only right of the plaintiffs to contest the assignment of Belt to King arises from the levy of an attachment upon the assigned property, neither the writ of attachment nor the return of the marshal of the levy thereunder appears in the record or testimony. Nor does the record contain a copy of the complaint in which these proceedings were probably averred. The only pleadings before us are the interplea of King, filed in the action, (which appears to have been brought against Belt alone,) setting up the assignment, and the answer of the plaintiffs thereto, denying the ownership of King and averring the fraudulent character of the assignment. But as the interplea of King alleges that on December 31, 1891, and just after he had completed an inventory of the property so assigned, plaintiffs caused a writ of attachment to be levied upon a portion of the property, we may treat this as a sufficient admission of plaintiff's title to justify us in passing upon the question of the validity of the assignment upon which the case largely depends.

1. This assignment is attacked by the plaintiffs chiefly upon the ground that it contains a provision that the preferred creditors shall accept their dividends "in full satisfaction and discharge of their respective claims," "and execute and deliver to said John C. Belt a legal release therefor." This provision has been the subject of discussion in England and in most of the States, and in a large number of cases has been held to avoid the assignment, upon the ground that the debtor has no right to compel his

creditors to accept his terms or lose their preference. In England a clause of a somewhat similar nature was held to be void under the statute of Elizabeth as an attempt to hinder, delay or defeat creditors, (*Spencer* v. *Slater*, 4 Q. B. D. 13,) though the applicability of that case to this particular provision admits of some doubt.

The fact that it enables the debtor to extort a settlement by playing upon the fears or apprehensions of his creditors is thought by the courts of many of the States to be sufficient to justify them in setting aside the assignment; and where such provision has been sustained it has usually been in deference to authority rather than upon conviction of its propriety or wisdom. The question was discussed at considerable length by Mr. Justice Story in *Halsey* v. *Whitney*, (4 Mason, 206, 227,) and the validity of the clause sustained largely in deference to the case of *King* v. *Watson*, (3 Price, 6,) where, as he states, the very exception was taken by counsel and the assignment held good by the Court of Exchequer. *King* v. *Watson*, however, has but a remote bearing, and seems to have been *pro tanto* overruled by the case of *Spencer* v. *Slater*, above cited. Mr. Justice Story finally remarks that if the question were entirely new and many estates had not passed upon the faith of such assignments, the strong inclination of his mind would be against their validity. "As it is," said he, "I yield with reluctance to what seems the tone of authority in favor of them." Somewhat similar doubt is expressed by Mr. Chief Justice Taney in *White* v. *Winn*, a memorandum of which is found in 8 Gill. 299. The question was also incidentally considered by this court in *Security Trust Co.* v. *Dodd*, (173 U. S. 624, 633,) but the case went off upon another point.

This court has never directly passed upon the validity of this provision, but wherever it has been called in question it has been treated as determinable by the local law of the State from which the question arose. Thus, in *Brashear* v. *West*, (7 Pet. 608,) the clause was upheld solely upon the ground that the courts of Pennsylvania had sustained its validity. The assignment in that case was in trust to pay and discharge the debts due from the assignor, first, to certain preferred creditors, and afterwards to creditors generally, provided that no creditor should be entitled to receive a dividend, who should not within ninety days execute a full and complete release of all claims and demands upon the assignor. Mr. Chief Justice Marshall, after summarizing the arguments for and against the validity of this provision, did not commit the court to the expression of an opinion, but held that "the construction which the courts of that State (Pennsylvania) have put on the Pennsylvania statute of frauds must be received in the courts of the United States," and decided the case upon the authority of *Lippincott* v. *Barker*, (2 Binney, 174,) in which this question arose, and was decided after an elaborate argument in favor of the deed. He also remarked that the question had been decided the

same way in *Pearpoint* v. *Graham*, (4 Wash. 232.) In that case Mr. Justice Washington thought that an assignment in trust for the benefit of such creditors as should release their debts was founded upon a good and valuable consideration, and was valid, the only inquiry being whether it was *bona fide*. The assignment was supported in favor of such of the creditors as executed a release of their demands within sixty days after the date of the instrument, that being the time limit provided for such acceptance. Neither in *Lippincott* v. *Baker* nor in *Pearpoint* v. *Graham* were there any preferred creditors, but the assignments were in trust for all the creditors who should within sixty days in one case and four months in the other execute a release of their demands. In several subsequent cases the rule laid down in *Brashear* v. *West* has been adopted, and the principle fully established that the construction and effect of a State statute, regulating assignments for the benefit of creditors, is one upon which the decisions of the highest courts of the State are a controlling authority in the Federal courts. They are treated as establishing a rule of property applicable within their several jurisdictions. (*Sumner* v. *Hicks*, 2 Black, 532; *Jaffray* v. *McGehee*, 107 U. S. 361; *Peters* v. *Bain*, 133 U. S. 670, 686; *Randolph* v. *Quidnick Co.*, 135 U. S. 457; *Chicago Union Bank* v. *Kansas City Bank*, 136 U. S. 223, 235; *South Branch Lumber Co* v. *Ott*, 142 U. S. 622, 627.)

The same rule has been held to be applicable to decisions of State courts construing the statute of frauds. (*Allen* v. *Massey*, 17 Wall. 351; *Lloyd* v. *Fulton*, 91 U. S. 479, 485.)

Whatever might be our own views with regard to the validity of a release by creditors as a condition of preference under an assignment, the question is one which, upon the authorities above cited, must be held to be determinable by the State law as interpreted by the Supreme Court of such State.

While the case under consideration arose in the Indian Territory, the law applicable thereto is determined by the laws of Arkansas, which were adopted and extended over the Indian Territory by the act of Congress approved May 2, 1890, (26 Stat. 94, sec. 31,) which declares that certain general laws of Arkansas, "which are not locally inapplicable or in conflict with this act, or with any law of Congress relating to the subjects specially mentioned in this section, are hereby extended and put in force in the Indian Territory," among which laws are enumerated assignments for the benefit of creditors and the statute of frauds. In adopting this law with respect to assignments, the courts of the Indian Territory are also bound to respect the decisions of the Supreme Court of Arkansas interpreting that law.

In more than one case we have had occasion to hold that, if a foreign statute be adopted in this country, the decisions of foreign courts in the

construction of such statute should be considered as incorporated into it. Thus in *Pennock* v. *Dialogue*, (2 Pet. 1,) it was said by Mr. Justice Story (p. 18): "It is doubtless true, as has been suggested at the bar, that where English statutes, such for instance as the statute of frauds and the statute of limitations, have been adopted into our own legislation, the known and settled construction of those statutes by courts of law has been considered as being silently incorporated into the acts, or has been received with all the weight of authority." In speaking of our patent act, which was largely taken from the English statute of monopolies, he says (p. 20): "The words of our statute are not identical with those of the statute of James, but it can scarcely admit of doubt that they must have been within the contemplation of those by whom it was framed, as well as the construction which had been put upon them by Lord Coke." In *Cathcart* v. *Robinson*, (5 Pet. 264,) Mr. Chief Justice Marshall said (p. 280): "By adopting them (British statutes) they become our own as entirely as if they had been enacted by the legislatures of the States. The received construction in England at the time they are admitted to operate in this country, indeed to the time of our separation from the British Empire, may very properly be considered as accompanying the statutes themselves, and forming an integral part of them. But however we may respect subsequent decisions, and certainly they are entitled to great respect, we do not admit their absolute authority." See also *Kirkpatrick* v. *Gibson's Executors*, (2 Brock. 388.) The same rule has been applied in the State courts in the construction of statutes adopted from other States. (*Commonwealth* v. *Hartnett*, 3 Gray, 450; *Tyler* v. *Tyler*, 19 Ill. 151; *Bloodgood* v. *Grasey*, 31 Ala. 575; *Marqueze* v. *Caldwell*, 48 Miss. 23; *State* v. *Robey*, 8 Nev. 312; *The Devonshire*, 8 Sawyer, 209.)

As the Arkansas statutes concerning assignments for the benefit of creditors and the statute of frauds were extended and put in force in the Indian Territory by the act of Congress above cited, it becomes material to consider the decisions of the Supreme Court of that State with reference to the validity of the provision of an assignment exacting a release by creditors of all their demands against the assignor as a condition of preference. The subject was first considered in *Clayton* v. *Johnson*, (36 Ark. 406, 424,) in which an assignment for the benefit of creditors without preferences was held to be valid, notwithstanding a proviso that no creditor provided for should participate in the assets "unless he accepts the same in full of his claim." The question is most elaborately considered in that case, and a distinction taken between a conveyance of the whole and the conveyance of a part only of the debtor's property upon condition of releasing the residue. The latter was thought to be fraudulent and pernicious in its tendencies. In *McReynolds* v. *Dedman*, (47 Ark. 347,) it was held that, although an assignor might make preferences and exact re-

leases from creditors who assented to the assignment, if he reserved to himself, to the exclusion of non-assenting creditors, the surplus that remained, the deed was fraudulent upon its face. The difficulty with that assignment was that, in case the creditors refused to execute the releases, the residue, instead of being devoted to the payment of the assignor's creditors, was to revert to the assignor himself. This case is wholly consistent with that of *Clayton* v. *Johnson*. In the subsequent case, however, of *Collier* v. *Davis*, (47 Ark. 367,) *Clayton* v. *Johnson* was formally overruled, and an assignment which provided that no creditor should participate unless he should accept his share in full satisfaction of his claim, and gave no direction for the application of the surplus after satisfying assenting creditors, was held void upon its face. It may be noted that the personnel of the court had changed since *Clayton* v. *Johnson* was decided. In the subsequent case of *Wolf* v. *Gray*, (53 Ark. 75,) decided a few weeks before the act of Congress of 1890, notwithstanding the former overruling of *Clayton* v. *Johnson* in *Collier* v. *Davis*, it is said that its authority upon the stipulation for a release was not impaired, except as modified by the cases before cited. It follows, said the court, that "the law is established here, in accord with much authority elsewhere, that a stipulation for a release in a general assignment, which is made only as a condition of preference, does not invalidate the instrument." The assignment in that case preferred one creditor and provided for payment to all other creditors who should execute releases of the residue of their debts. This case was followed by *King* v. *Hargadine-McKittrick Dry Goods Co.*, (60 Ark. 1,) where the very assignment in question in this case was held to be valid, notwithstanding the provision for a release by creditors as a condition of preference. Without determining the validity of such a provision at common law, we are of opinion that the courts of the Indian Territory did not err in applying the settled construction of the law of Arkansas to the assignment in this case, and in holding the provision for a release of creditors to be valid.

2. Plaintiffs also seek to impeach the assignment upon the ground that there was no evidence of its acceptance by any of the creditors, or their assent thereto; and the position is taken that, while the creditors may be presumed to accept an assignment made for their benefit, such acceptance will not be presumed, where the assignment is subject to the condition that the creditors consent to a release and discharge of their claims against the estate. Error is also charged in the rendition of the judgment against persons who were not parties to the immediate case, but who had stipulated other cases into this case for a like judgment; and also in the fact that a personal judgment rendered against the plaintiffs in error for the value of the goods in controversy was not contemplated or allowed by the statute under which the proceedings were had.

It is a sufficient answer to these objections to say that neither of them appears to have been called to the attention of the courts below. They do not seem to have been raised at the time the judgment was entered. It does not appear that any assignments of error were filed in the Court of Appeals for the Indian Territory, but the opinion states that plaintiffs relied upon four objections to the assignment as showing upon its face that it was fraudulent in law. No objection seems to have been raised in that court to the form of the judgment. In the assignments of error in the United States Court of Appeals for the Eighth Circuit no such question is raised and none alluded to in the opinion. Such objections could not be raised for the first time in this court. (*Insurance Co.* v. *Mordecai*, 22 How. 111, 117; *National Bank* v. *Commonwealth*, 9 Wall. 353; *Wheeler* v. *Sedgwick*, 94 U. S. 1; *Wilson* v. *McNamee*, 102 U. S. 572; *Edwards* v. *Elliott*, 21 Wall. 532; *Clark* v. *Fredericks*, 105 U. S. 4.)

While it is the duty of this court to review the action of subordinate courts, justice to those courts requires that their alleged errors should be called directly to their attention, and that their action should not be reversed upon questions which the astuteness of counsel in this court has evolved from the record. It is not the province of this court to retry these cases *de novo*.

The judgment of the Court of Appeals is *Affirmed.*

Mr. Justice SHIRAS and Mr. Justice WHITE concurred in the result.

True copy.

Test:

Clerk Supreme Court, U. S.

5904

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 46.

J. M. ROBINSON & CO.,
Plaintiffs in Error,

vs.

J. C. BELT AND C. M. KING,
Defendants in Error.

Now come the plaintiffs in error and respectfully move and pray the Court to grant them a rehearing herein, and for grounds for this application show and represent:

That on the hearing heretofore had in this court in this cause they, the plaintiffs in error, contended that the judgment in this cause should be reversed, (1) because there was no evidence of the acceptance of the assignment in question herein by any of the creditors who were preferred by that assignment; and (2) because the judgment rendered in this cause included a personal judgment against the plaintiffs in error for the proceeds of the property in contro-

versy; but that this court did not consider these contentions, which were duly assigned as error, because it was of the opinion that "neither of them appears to have been called to the attention of the courts below," and for no other reason.

With respect to the first of these contentions the plaintiffs in error submit that it appears from the record herein that the trial court was specifically requested by them, upon the close of all the testimony, to direct the jury to find a verdict in their favor, but refused so to do, and that the plaintiffs in error thereon duly saved exceptions to such refusal (printed record, pages 49 and 56); and, furthermore, that after such refusal the plaintiffs in error again requested the Court to instruct the jury as follows: "The Court instructs the jury that there is no evidence in this case to sustain the claim of the interpleader, and you will find your verdict in favor of the plaintiff J. M. Robinson & Co.;" that this instruction was refused, and that the plaintiffs again excepted (printed record, pages 56–57); and that, while the assignment of errors which was, or should have been, filed in the United States Court of Appeals in the Indian Territory does not appear, nevertheless the record in this court does show that the foregoing rulings were expressly assigned as error in the assignment of error filed in the Circuit Court of Appeals for the Eighth Circuit (see tenth and twelfth assignments of error on page 70 of printed record). And plaintiffs in error state that, in contending in this court that the interpleader was not entitled to recover, because there was no evidence of any acceptance of the deed of assignment, they proceeded upon the view that a request for an instruction, that there was no evidence to sustain the claim of the interpleader, warranted that contention.

With respect to the second of the foregoing contentions, namely, the point that a personal judgment against the plaintiffs in error was not warranted in the case at bar, the plaintiffs in error respectfully submit:

1. That they were entitled to raise this assignment of error in this court, even if it was not presented in the lower courts, since it was a question of jurisdiction, and since such question can be raised in this court for the first time;

2. Because the question is not only one whether the pleadings warrant the judgment, but even one which is at the foundation of the judgment and underlies the right of recovery which that judgment asserted and effectuated, and one of which the lower courts were bound to take judicial cognizance; and because a question of that character can also be raised in this court, even though the attention of the trial court has not been directed thereto;

3. Because the question was in fact raised in the trial court and in both of the intermediate appellate courts, namely, the United States Court of Appeals for the Indian Territory, and the Circuit Court of Appeals for the Eighth Circuit; and because the record herein so shows;

That a question of jurisdiction may be raised for the first time in this court is a proposition which will be at once conceded. Is not the jurisdictional character of the objection, now under consideration, to the judgment in this cause equally apparent?

The proceeding under review is purely statutory. It receives its warrant from the statute alone; the statute defines its extent and limits. What the statute authorizes the court may do; nothing else. The objection to the judgment is one as to the power of the court to render the judgment; in form and substance it is, therefore, jurisdictional.

"The proceeding of interpleader, in an action of attachment, in somewhat *sui generis*. It is solely the creature of the statute." (*State ex rel v. Barker*, 26 Mo. App. p. 491.)

And said the Supreme Court of Missouri in an action in which a verdict for the value of the attached property had been rendered in favor of the interpleader under a statute substantially the same as the one controlling the proceeding at bar:

"This verdict was a mere nullity, and the Court should have set it aside." (*Mills v. Thompson*, 61 Mo. p. 417.)

"When a court of general jurisdiction is invested by statute with special powers to be exercised, not through its ordinary process and modes of procedure, but in an extraordinary mode prescribed by statute, neither the jurisdiction nor the remedy is to be extended beyond the legislative grant; but the proceedings of the court must be regarded as those of a court constituted with special and limited jurisdiction, and will be held invalid if the facts conferring jurisdiction do not appear." (*Drake on Attachment*, 7 Ed. Sec. 87, p. 71, citing *Williamson v. Berry*, 49 U. S. 495 and other decisions of this Court.)

In the case at bar the authority or power exercised does not even depend upon any special facts; it does not exist under any circumstances.

But the cases in which an objection may be raised for the first time in this court are not limited to jurisdictional matters. They extend to an objection that a statute on which the judgment is based has been repealed (*Bank v. Francklyn*, 120 U. S., pp. 750, 751); also to an objection that the pleadings do not warrant the judgment (*Kentucky, Etc., Co. v. Hamilton*, 22 U. S. App. 386; *s. c.* 11 C. C. A. 42;

Cyclopedia of Law and Procedure, Vol 2, p. 691, title Appeal and Error, and numerous cases there cited, as well as in *Century Digest*, Vol. 2, p. 1710, Sec. 1232, title Appeal). The ruling in *Kentucky, Etc., Co. v. Hamilton, supra*, is predicated upon the following holding, quoted therein from the opinion of Chief Justice Marshall in *Slacum v. Pomeroy*, 10 U. S. 221:

> "It is not too late to allege as error in this court a fault in the declaration which ought to have prevented the rendition of the judgment in the court below."

When error does not arise upon the record proper, it must always be preserved by exception, and thus be brought to the attention of the trial court; but, when it does arise upon the record proper, when it appertains to the essence of the controversy, and, above all, when it could not have been obviated in the trial court consistently with the relief afforded—and these are the features attending the present question—then, it is submitted, appellate courts will not hesitate to take cognizance of it in the first instance.

That the objection under consideration was, moreover, amply presented in the trial court, and in both the intermediate courts, appears from the following references to the printed record.

Immediately after the commencement of the trial herein counsel for the interpleader asked a witness to state the value of the property which had been attached. Thereupon counsel for the plaintiffs in error objected. The nature of the objection is not specifically stated in the record, but the record merely recites that "a lengthy argument occurred between counsel, the conclusion of which was as follows:" Here follow remarks by the Court which show,

beyond doubt, that the objection was on the very ground which is now under consideration, and that at the time the Court considered the objection well taken, but merely admitted the evidence for the purposes of an appeal. From the remarks of the Court we quote the following:

> "The Court: It seems to me that much of the argument of counsel, and it has been very exhaustive and able, has related to cases or conditions which might have arisen and remedies which they might have availed themselves of, if they had desired to do so and if they had availed themselves of these remedies they could have pursued them as these authorities have indicated, but this is a special remedy under a special statute and is known as interplea and at the time this interplea was filed here there was nothing for them to claim except a portion or all of the proceeds that were in court. If they had desired to hold the Marshal responsible for trespass they should have instituted proceedings to that end. * * * Under this special remedy here it seems to me that claim must be confined to the proceeds that were in court. The interpleader asks for a specific thing, that is property in court at the time he filed his petition. * * * All that you can reach at this time is the funds which have been collected. * * * I am, however, inclined to formally overrule the objection notwithstanding my opinion now and let all the facts go to the jury. * * * Out of great caution, as this has already gone up to the Appellate Court once, and will probably go up again, this Court desires to avail itself of all the light possible before all the evidence is introduced. Therefore, I will allow the gentlemen to establish that fact.
>
> "To which ruling of the Court plaintiffs, by their counsel, then and there excepted." (See printed record, pp. 27 and 28.)

This ruling plainly raised the objection and plainly contained a ruling on it; but, inasmuch as that ruling was not put to avail, in that the verdict was not for the value of the attached property, and in that the personal judgment was not for that value, but that both were for the total proceeds derived from the sale of that property, the ruling furnished no real basis for assignment of error.

The same objection, however, arose upon the termination of the trial, when the parties presented their requests for direction to the jury. The record shows that the plaintiffs in error then requested the Court to direct the jury to return a verdict in their favor, and that the interpleader then requested the Court to direct the jury to find for him, and also to direct the jury under the proof and the evidence to find the value of the attached property.

The record shows that, after the presentation of these requests, another argument took place, whereupon the Court took a recess until the succeeding Saturday, on which day further arguments took place, and that an adjournment was then had until the following Monday, when a further argument occurred, and that on the latter day, and "pending the argument addressed to the Court on legal questions," the plaintiffs in error obtained leave to amend their answer herein by inserting allegations that the property attached in this cause, and in the other causes mentioned in the judgment herein, had been sold, and that the proceeds of the sale had been paid out under the prior proceedings, to which allusion had been made in the brief hereinbefore filed by the plaintiffs in error.

This amendment commences as follows:

> "The plaintiffs further answering say that the interpleader could not recover in this case because the

> fund for which the property was sold, and which was in court at the time the interplea was filed herein, has been distributed amongst the attaching creditors of said assignor Belt in accordance with the judgment of this Court entered on the sixteenth day of December, 1893, which was as follows:"

And this amendment concludes as follows:

> "And there is now no fund or proceeds in court which the interpleader can recover in this action or to which the interpleader had any right." (Printed record, pp. 49 to 54.)

When this amendment was made, the interpleader demurred orally, and thereupon the court held, "that the amended answer in this particular does not present a legal defense to the interplea in this case," and in the course of its ruling remarked:

> "The court allowed this amendment to be made for the reason that it may be a material fact in the issue, and that this case will probably go to the Circuit Court of Appeals, and perhaps to the Supreme Court of the United States, no matter how it may be decided now. Therefore, in order to present the whole issues that may be presented in this case, the court has allowed this amendment to be made subject to the exceptions of counsel as to whether it does or does not present a legal defense to the pleading."

After this ruling was announced the plaintiffs in error offered to prove that the fund realized from the sale of the attached property had been distributed and paid out in accordance with the judgment of the court entered on the sixteenth day of December, 1893. To this offer the interpleader objected; the court sustained the objection; and the plaintiffs in error excepted. (Printed record, pp. 54, 55 and 56.)

Thereupon the trial was concluded and the court gave its instructions to the jury. The first of these

instructions, the same being given by the court of its own motion was as follows:

> "First. That the interplea filed in this case by C. M. King states a good cause of action for the recovery of the attached property or its proceeds; and if the jury believe from the evidence that the averments in said interplea are substantially true, they will find for the interpleader C. M. King." (Printed record, p. 57.)

Under this instruction the jury by its verdict found the issues in favor of the interpleader and also found "that the proceeds arising from the sale of the attached property was seventy-nine hundred dollars ($7,900.00);" and it was on this verdict that the personal judgment for $7,900.00 against the plaintiffs in error was entered. (Printed record, page 22.)

The plaintiffs in error respectfully submit to this Court that the foregoing references to the record herein show that the trial court was fully advised by objection of the contention of the plaintiffs in error, that the proceeding herein did not warrant any personal judgment, but that the right of recovery could not in any event be other than for the proceeds of the attached property; in other words, that the present proceeding was an intervention to establish the title of the interpleader to the attached property, and not in any sense an action for damages for the levy thereon. Aside from the objection at the outset to evidence of the value of that property, and the remarks of the Court at the end of those objections, showing this clearly, does it not also appear from the subsequent proceedings? Of what other use would be the amendment allowed to the answer of the plaintiffs in error that the interpleader could not recover because the proceeds of that property had been distributed, and that there were no longer funds or proceeds in court which the interpleader could re-

cover; what other purpose or object can be assigned to the oral offer of the plaintiffs in error to show by evidence that the fund in court had been distributed and paid out? That the court understood this to be the object appears from its remarks when this evidence was offered; for it said (printed record, page 50):

> "The only object I can see now for introducing this would be to guide the court in any judgment it might give."

By pleading that the interpleader could not recover because the proceeds of the property attached had been disposed of, the plaintiffs in error necessarily asserted that there could be no judgment other than that for the fund. In short, their position in this matter and in the offer of proof was, first, that there could be no personal judgment in this case, but that the statute under which this proceeding was had warranted only judgment for *res* attached; and, secondly, that there could not in this case be a judgment for that *res*, because it had gone out of the custody of the court.

In this court the plaintiffs in error have adhered to their first proposition, but have abandoned their second; this is the only difference between their position in the trial court and in this court.

Again the instruction given by the court to the jury that the interplea stated a good cause of action for the recovery of the attached property or its proceeds, followed as it was by a verdict finding the amount of the proceeds and a personal judgment for that amount, specifically raises the question of the right of the Court to render that personal judgment. Under the conditions existing at the time of this instruction the interpleader was not entitled to recover

those proceeds from the plaintiffs in error, but only entitled to a restoration of so much of those proceeds as the plaintiffs in error had obtained.

The printed record herein further shows that the foregoing matters, and the question which arose concerning them, were brought to the attention of the Court of Appeals for the Indian Territory. That court, in its opinion, refers to the amendment which was made by plaintiffs in error to their answer to the interplea, and also refers to the fact that it was claimed in this amendment that there was no fund which the interpleader could recover (printed record, p. 62); it also refers to the offer of plaintiffs in error to show that 87 per cent of the proceeds of the attached property had been distributed, and sustains the rejection of the evidence (printed record, p. 66); and it also refers to and upholds the first instruction hereinbefore mentioned, which authorizes the recovery for the proceeds of the attached property. (Printed record, p. 66.)

In the Circuit Court of Appeals for the Eighth Circuit the refusal of the Court to allow the introduction of evidence of the distribution of 87 per cent of the proceeds of the attached property among the attaching creditors is specifically assigned as error, as is also the giving of the first instruction hereinbefore referred to. These assignments of error are respectively numbered fourth and fifth. (Printed record, p. 69.)

The plaintiffs in error hereinbefore have undertaken to show that the objection to the entry of a personal judgment was, in a legal sense, brought to the attention of the trial court, and of both the intermediate courts of appeal. They have no thought of claiming that, if this did not appear from the record herein, they could establish it *dehors* the record.

But, having shown that this does not appear from the record, they desire, and take occasion, to refer to the brief filed on their behalf in the Circuit Court of Appeals for the Eighth Circuit for the purpose of showing, as a matter of fact, that their argument in the Court of Appeals embraces their objection to the entry of a personal judgment. For this purpose they have obtained, and they will file herewith, one of their printed briefs, which was filed in the Court of Appeals for the Eighth Circuit, and which contains the file mark of the Clerk of that Court; and they respectfully call the attention of the Court to the concluding pages, namely, pages 21 and 22 of that brief, and, as a matter of convenience, quote the following therefrom:

> "Therefore, at the time of the trial of this interplea, and the rendition of the judgment in this case, there was no fund in court to litigate about, and the Court, therefore, erred in rendering a personal judgment against the attaching creditors for the full proceeds of sale originally turned into court by the marshal, which was the sum of $7,900.00; whereas, the plaintiffs themselves had only gotten 87 per cent of that amount. The Court could not, under the law, render a personal judgment against these plaintiffs in the trial of the interplea for that or any other sum. *Jefferson v. Dunavant*, 53 Ark 133; *Fly v. Grieb's Administrator*, 35 S. W. 214; *Williams v. Braden*, 57 Mo. App. 317; *Jennings v. Hoppe*, 44 Iowa 205; *Bicklin v. Kendall*, 34 N. W. 283. Since the foregoing was prepared, we have seen a certain decision of this Court, not yet reported, which we think absolutely settles this case. In *Swift v. G. S. Russell, Interpleader*, 97 Fed. ...., this Court said: 'The recovery which the interpleader can secure in this proceeding must be limited to the proceeds of the attached property and the cost of the proceeding.' As the Court there well said, 'this is a proceeding for a distribution of the property or money

in the custody of the Court, and not for the recovery of either from any person or party.' Therefore no money judgment could be properly rendered against the plaintiffs. The Court only had jurisdiction to act on the interplea by virtue of having the fund in its custody. When that fund had been distributed its acts were *coram non judice.*"

Although the rules of this court entitle the plaintiffs in error to file their motion for rehearing during the present term of the court, they feel that they ought to say, in explanation of the delay which has ensued since the rendition of the opinion herein by this court, that, when they first heard of the affirmance of the judgment of the trial court by this court, they had no intention of filing any such motion; and that they only concluded to file the same after the opinion of this court was published, which was in the course of the present month, and they learned therefrom that such affirmance was predicated by this court on the hypothesis that the objections under consideration had not been raised in the lower courts.

Wherefore plaintiffs in error pray for a rehearing herein, and also pray, that if a mandate has been issued from this court the same may be recalled.

Respectfully submitted.

DAVID GOLDSMITH,
Attorney for Plaintiffs in Error.

I certify that the foregoing petition is, in my opinion, well founded, and that it is not made for the purpose of delay.

DAVID GOLDSMITH,
Attorney for Plaintiffs in Error.